articles of association of all kinds of companies including private limited companies, object clauses and capital clauses of various companies, rulings for different books &c. to be kept, notices, resolutions &c. that may be required for all ordinary purposes.

A table of stamp duties payable in connection with the formation and management of companies has been given in Appendix G.

In order to make room for insertion of these things matters have been compressed in this edition to their utmost extent. Still, so large additions would not have been possible without leaving out the English Act of 1929 which is of little practical use in this country until amendment is made of the existing Act incorporating the provisions of the former. In the first edition this English Act was printed for the reasons given in the Preface thereto. But as it now appears that on account of the impending Reforms in the Constitution the Government is not in a position to undertake this heavy piece of legislation during the next few years, I have thought it better to omit the English Act of 1929 so that more useful matters may be inserted.

I am under deep obligation to my erudite friend Dr. Radhabinod Pal, M.A., D.L. (Tagore Professor of Law in 1925 and again in 1930, and Advocate for the Commissioner of Income Tax, Bengal) for writing a Chapter for this book on the law and rules relating to Income Tax as applicable to companies. This has been printed as Appendix H and is for the guidance of people having connection with companies.

I offer my sincere thanks to Mr. N. K. Majumder, M.A., G.D.A., R.A., Registrar of Companies, Bengal, and to Mr. A.L. Collett, Registrar, Original Side, Calcutta High Court, who have, very kindly, helped me with valuable informations and suggestions regarding the Rules and Forms.

The Index to this edition has been prepared by Mr. Khadyot Kumar Ghosh, B.L., Pleader, and the Table of Cases by Mr. Pradyot Kumar Ghosh. My thanks are due to both of them for their labours.

Bar Association,
High Court, Calcutta.
15th February, 1934.

K. M. GHOSH.

Preface to the First Edition.

The Indian Companies Act (VII of 1913) is almost a verbatim reproduction of the English Companies (Consolidation) Act of 1908. Although some minor amendments were made in the English Act, principally by the Acts of 1913 and 1917, the real changes were introduced by the Companies Act, 1928 (18 & 19 Geo. 5, c. 45). This Act contained 118 sections with many amendments in the Schedules. It made so many alterations that consolidation became necessary. So the Companies Act, 1929 (19 & 20 Geo. 5, c. 23) was passed which consolidated all the Acts from 1908 to 1928. It came into operation on the 1st November, 1929.

As a result of this new Act, the Indian Act will, no doubt, be overhauled ; but when the Government will be in a position to undertake this onerous task is a matter of speculation. In this connection it should be borne in mind that in normal times it took the Government about five years to reproduce the provisions of the English Act of 1908 in the present Indian Act. This time the public will not be satisfied with such reproduction of an English statute and a considerable body of opinion has already grown against this course.......

From the two tables of corresponding sections the reader will see at a glance that out of 385 sections (as against 296 of the Act of 1908) 94 sections are altogether new, and amendments have been made in 125 other sections. All these new provisions will have to be considered in the light of public opinion which is yet to be elicited and further provisions for the protection of the investing public will have to be made in view of the peculiar conditions prevailing in this country. At present the hands of the Government of India are full on account of the pending question of Reform and disturbed political conditions. The consideration of such an important and contentious measure will require a calmer atmosphere.

Soon after the passing of the present Act of 1913 the Calcutta High Court, as all other High Courts, made Rules under s. 246. These Rules were published in the Gazette of India on 15th February, 1930. These have been printed as Appendix G.

Although there is a number of books on the Indian company law in the field, so far as real annotated editions on the lines of Lord Justice Buckley's Companies Act are concerned, there are not too many of them. Moreover a considerable number of important decisions have been passed on this subject by the highest Courts, in England and India, during the last few years. So there is perhaps some scope for a work like this in which I have endeavoured to collect almost all important decisions, reported up to date, under the appropriate sections, the English cases naturally far outnumbering those of all the High Courts in India put together. I have tried, wherever possible, to explain the more important principles of company law by giving ample quotations from the judgments of eminent English and Indian Judges.

Special attention has been paid to the elucidation of those matters which a layman is likely to feel difficulty in understanding when he is engaged in promoting, floating and managing limited liability concerns, as for instance :—the nature, scope, powers and limitations of public and private companies ; acts *ultra vires* of companies and directors ; powers, duties, rights and liabilities of directors and managers, and how far their acts bind the company ; the duties and liabilities of auditors ; jurisdiction of Courts and the doctrine of internal or what Lord Hatherley called "indoor" management ; debentures, ordinary and perpetual ; fixed and floating charges ; conversion of private companies into public companies and *vice versa* ; meanings of share capital and fixed and circulating capital ; distinction between share and stock ; different classes of shares, *e.g.*, preference, ordinary, deferred, pre-preference and founder's shares ; cumulative and non-cumulative dividends ; nature of shares and the mode of their transfer ; transfer in blank and priority of titles ; rectification of the register of members before and after winding up ; re-organisation, re-construction and amalgamation of companies and their effects on different classes of shareholders ; extraordinary and special resolutions ; statutory, ordinary and extraordinary general meetings, notice, quorum, adjournment, voting, poll, minutes, and chairman's rights and duties regarding general meetings and board meetings ; contracts, bills of exchange &c. and liabilities of companies thereon, as well as the personal liabilities of the directors and managers ; the meaning of "promoter" and his liabilities ; what constitutes a prospectus and the duties and liabilities of the directors and promoters in connection therewith ; authority coupled with interest ; underwriting, allotment, call and forfeiture of shares ; different kinds of winding up and their incidence ; contributories, past and present ; their respective liabilities and the right of set off; duties and liabilities of official and voluntary liquidators; effect of a compulsory winding up order and stay of suits and proceedings against the company; application of the bankruptcy rules in winding up; public and private examination of directors and officers; fraudulent preference; preferential payments and prerogative rights of the Crown in the winding up; *bona vacantia*; misfeasance of promoters, directors, officers, liquidators and auditors; defunct companies; &c. Although these and many such matters are fairly well known to the members of the legal profession, they are not so clear to business men who really conduct the affairs of limited companies. Therefore I have tried to explain them at some length by reference to as many decided cases as possible.

In annotating Table A of the Act notes on those points only have been given which have not been previously dealt with under the appropriate sections to which references have been given. I have tried to avoid repetition by giving cross-references under various sections of the Act and articles of Table A.

Rules and notifications made under the Act by the Governor General in Council and corrected up to date have been given in Appendix A. For the convenience of secretaries and managers of companies three tables have been compiled and printed as Appendices B., C. and D.

In writing any commentary on the Indian Companies Act one must draw largely upon the various standard works on the English company law. In this respect I am greatly indebted to Lord Justice (Lord Wrenbury) Buckley's Companies Act, 13th ed. (1924), Sir Francis Gore-Brown's Joint-Stock Companies, 36th ed. (1925), Palmer's Company Precedents, 12th ed. (1922) and his Company Law, 13th ed. (1929), Halsbury's Laws of England, vol. V (Company), Mr. Justice Buckland's Indian Companies Act, 3rd ed. (1922); Stiebel's Company Law and Precedents, 3rd ed. (1929), Topham's Company Law, 5th ed., Haydon's Secretary's Manual, and Crew's Public and Company Meetings.

For the detailed Index my best thanks are due to Mr. Monmohan Banerjee, M. A., B. L., Advocate, Calcutta High Court, who is also on the staff of the Indian Cases.

Bar Association,
High Court, Calcutta,
24th March, 1930.

K. M. G.

ADDENDA.

S. 2, sub-s. (1), cl. (2). *Company.* The word "Company" covers a company registered under the old Act VI of 1882. But the fact that the provisions of the Act of 1913 are made applicable to such a company cannot render that company one actually registered under the Act of 1913—*Chota Nagpur Banking Assn. v. Radha Gobinda* (1941) Pat. 561, 194 I. C. 649.

S. 3. Under the Act the High Court is the Court which has jurisdiction to wind up a company having its registered office anywhere in the Punjab—*Raghubir Singh v. Indian M. P. Fund Insurance Co.* (1942) L. 74, 44 P. L. R. 1.

S. 4, sub-ss. (2) & (5). Where a company consisting of more than 20 persons formed in 1922-23 is unregistered, the members thereof can be punished for continuing to be members of such company under sub-s. (5) (enacted in 1936) though they cannot be punished for originally forming themselves into a company in contravention of sub-s. (2)—*Muthuveeran v. Mottayan* (1942) 1 M. L. J. 230.

S. 21. Though a memorandum and articles may not constitute a contract as between a promoter and the company, an implied contract may be proved by the acts of parties on the terms set out in the articles—*Gulab Singh v. Punjab Zemindara Bank* (1942) L. 47(49), 43 P. L. R. 619, relying on *Isaac's case* (1892) 2 Ch. 158; *Beckwith's case* (1898) 1 Ch. 324 and *R. Solton & Co.* (1894) 3 Ch. 356. Thus, where in pursuance of certain articles acted upon by the company a shareholder was appointed managing director and acted as such for 11 years and was remunerated in accordance with the terms set out in the articles, the articles constituted an implied contract between the company and the shareholder, so as to entitle him to a declaration that he was the managing director of the company—*Ibid.*

S. 32, sub-s. (5). While a company is always liable where a return is not sent to the registrar as required by this section, the officers of the company are liable only if they *knowingly or wilfully* authorise or permit the default—*Public Prosecutor v. Lury & Co.* (1941) 2 M. L. J. 487, 1941 M. W. N. 846, approving *Bhaskaradu v. Subbarayudu* (1914) 38 Mad. 674.

S. 72. This section is merely permissive and not imperative; it only provides one of several methods whereby a communication or notice may be served on a company—*Dawsons Bank v. Municipal Committee* (1941) R. 339 S. B. (Roberts C. J., Dunkley & Shaoo JJ.).

S. 76, sub-s. (2). Before an ordinary director can be convicted of an offence under this section, there must be evidence to show that he was knowingly and wilfully a party to the default—*Periannan v. Emperor* (1941) M. W. N. 959, 197 I. C. 729.

S. 91B, sub-s. (1). It is open to a company to agree with a shareholder to whom it owes money that the debt shall be set off against future calls. But where he is himself a director and the managing agent, he cannot validly vote for a resolution authorising such set off. The resolution would be invalid when the necessary quorum is lacking without such director's presence. Such a shareholder can therefore on liquidation be placed in the list of contributories in respect of an unpaid share money—*Panda Lal v. South Indian General Assurance Co.* (1941) 2 M. L. J. 595, 54 M. L. W. 440.

S. 109. An agreement between the parties that the amount paid to the company will be a second charge on the machinery and other goods of the company creates a floating charge, that is, a charge which would fasten on the property that might exist when the time arrived for the charge to be enforced, and would be void under s. 109 for non-registration—*Maheshwari Brothers v. O. L. Indra Sugar Works* (1942) A. 119 F. B., 1942 A. L. J. 75. For the principal tests as to whether a charge is a floating one or not, see this case.

S. 119. G. & Co. issued a debenture to D on 18-11-1937. Under its conditions the debenture-holder was authorised to appoint a receiver after the principal money had become due, and it was provided that any such receiver should be deemed to be the agent of the company. On 21-12-1939 D obtained the Court's leave under the English Courts' (Emergency Powers) Act, 1939, s. 1(2) to appoint a receiver, and on the following day W was appointed. On 10-10-1940 W applied to the Court for leave to sell the property. The company was not in liquidation: *held*, that the receiver must still be held to be the agent of the company and there was no need for the application—*In re Wood's Application* (1941) 110 L. J. 73.

S. 129. It was held in *Lewis Merthyr Consolidated Collieries* [(1929) 1 Ch. 498] that the preferential rights of creditors over those of debenture-holders applied only to the property secured by a floating charge. Therefore where the floating charge over certain property ceased to float, directly a receiver was appointed, but had become crystalized by that appointment, the creditors had no right under the Act to be paid in priority to the debenture-holders out of the assets comprised in that property. But the creditors will have priority in respect of other property over which no receiver was appointed—*Griffin Hotel Co., Joshua Tetley & Sons Ltd. v. The Company* (1941) 165 L. T. 57.

S. 137. This section has no relation to a prosecution for an offence under s. 282—*Emperor v. Vishwanath* (1942) S. 9.

S. 138. This section does not bar a prosecution upon a private complaint of an offence under s. 281—*Ibid.*

S. 141A. This section does not bar a prosecution upon a private complaint of an offence under s. 282—*Ibid.* The words "of any offence in relation to the company for which he is criminally liable" in this section mean not only criminally liable under the Act, but criminally liable under the Penal Code as well—*Emperor v. Vishwanath* (1942) S. 9.

S. 153. An order sanctioning a scheme of reconstruction of an insurance company by the dissolution of an old company and creation of a new one, even when such scheme involves the transfer of money deposited by the dissolved company under s. 7 of the Insurance Act, 1938 and the reduction of contracts of insurance, is an order under s. 153 of the Indian Companies Act, and an appeal lies against such order under cl. (4) of that section—*In re Light of Asia Insurance Co., Governor General in Council v. Sailendra Nath Mitra* (1942) 46 C. W. N. 441.

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The Governor General in Council even though he is not a party to the proceedings and the Superintendent of Insurance are entitled to appeal against such order—*Ibid.*

Creditors and policy-holders of an insurance company are two different classes of creditors, and a joint meeting of these two classes is not legal—*Ibid.*

S. 160, sub-s. (1). Sub-s. (1) of s. 160 does not deal with payment orders at all. A payment order against a deceased contributory is not executable. The ordinary law that a process against a dead man is a nullity is not altered by this section. The remedy of the liquidator is to proceed against the estate of the deceased in due course of administration—O. L. *Bharat National Bank v. Pandit Jogeshwar* (1941) L. 480, 43 P. L. R. 650 relying on *Peoples Industrial Bank v. Ram Chander*, 52 All. 430, (1930) A. L. J. 373, (1930) A. 503.

S. 162, cl. (v). In ascertaining the debts of the company the sums under items such as "calls in advance", "share suspense", "forfeited shares account" and "deposit against premium", which the company could not be called upon to pay immediately, cannot be taken into account, but "loans", "advances" and "outstanding liabilities" must be considered—*Sudhiya Nath v. Behar National Insurance* Co. (1941) P. 603, 20 Pat. 538.

S. 162, cl. (vi). Where in consequence of an onerous contract with a creditor the company loses its identity and the creditor becomes *de facto* the company with a power to bring it to an end whenever it suited him, and in accordance with the stipulation in the contract seizes the machinery and plant of the company with the result that the company is unable to carry on its business and to pay its debts, it is just and equitable to wind up the company—*Canning v. Soobran Pratap* (1941) P. C. 106(109).

Where an insurance company is sought to be wound up under the just and equitable clause and there is no evidence of the future prospects of the company, the fact that the Superintendent of Insurance has not taken any steps under s. 33 of the Insurance Act, 1938 for the winding up of the company, deserves consideration, though it is not a deciding factor—*Sudhiya Nath v. Behar National Insurance Co.*, 20 Pat. 538, (1941) P. 603.

In considering whether such a company should be wound up under the just and equitable clause, the sums due to the company from its debtors, agents and policy-holders and the value of its tangible assets in the form of furniture, motor cars, books, stationery &c. should be taken into account—*Ibid.*

The amount paid by a comparatively new insurance company in making a contact with the public and building up public confidence cannot be described as reckless expenditure. To some extent at least it represents the goodwill sought to be built up which is an asset—*Ibid.*

S. 171. Where the managing director of a company which is being wound up by Court presented a claim against the company and asked that his application should be treated as an application to file a suit against the official liquidator under s. 171 and he was allowed time for the purpose, but he failed to file the suit within the time granted and the Court refused to grant him a further extension of time, such refusal amounted to a dismissal of his claim, and he could not turn round and ask the Court to inquire into the claim under s. 191 and adjudicate on it in the liquidation proceedings—*General Agencies & Traders, Ltd v. Viswanadhan* (1941) 2 M. L. J. 417, 54 M. L. W. 275, (1941) M. 855.

S. 179. A successful litigant against a company in liquidation is entitled to be paid his costs in full in priority over other ordinary creditors, except where there are other creditors in the same position as himself when they both will rank *pari passu* as regards the fund available for the discharge of their debts--*Kailash Picture Palace, Ltd. v. Kidar Nath* (1942) L. 10, 43 P. L. R. 648 relying on *Dominion of Canada Plumbago Co.* (1884) 27 Ch. D. 33 and *Bailey & Leetham's Case* (1869) L. R. 8 Eq. 94. It is however open to the liquidator to show that the condition of the assets of the company was such that immediate payment cannot be made—*Ibid*, relying on *London Metallurgical Co.* (1895) 1 Ch. 758 and *Maneklal v. Suryapur Mills Co.* (1928) B. 252, 52 Bom. 477, 110 I. C. 33.

S. 179, cl. (f). After judgment had been given against a company in an action, the judgment-creditors brought proceedings to obtain a garnishee order directing payment to them of money in a banking account in satisfaction of the debt. The banking account was in the name of the liquidator of the debtor company who alone had authority to draw cheques on the account: *held* that the money in the bank (which had been paid into Court pending its decision) was not attachable, because it was money owed by the bank to the liquidator and not to the company between whom and the bank there was no relationship of banker and customer—*Lancaster Motor Co. (London) Ltd. v. Bremuth, Ltd.* (1941) 110 L. J. 398.

S. 186. A call validly made by the directors prior to liquidation of the company becomes a debt due from the shareholder after the date for its payment has passed and is indistinguishable from any other debt. The Court has no jurisdiction to question the propriety of the liquidator seeking to get in such a debt due to the company—*Public Benefit Provident Insurance Society* (1942) A. L. J. 47.

By virtue of sub-s. (2) of s. 186 it is wholly discretionary in a Court whether any set off can be allowed. As a fixed judicial principle the Court never allows a person to whom the company is indebted to set off the debt against what is due from him as a contributory in respect of calls—*Ibid.*

A voluntary liquidator who is a nominee of the Superintendent of Insurance under s. 90 of the Insurance Act, 1938 is not empowered to make a call himself without intervention of the Court—*Ibid.*

S. 186. Under the law of set off which is applicable in the winding up, where there are two amounts, one in the account of A and the other in the account of A and B (in this case B being wife of A), if it is shown that the latter account was really in trust for A, the amount due under one account can be set off against the amount due under another account—*Panikar v. T. N. & Q. Bank* (1942) 1 M. L. J. 161.

S. 191. [See the note under s. 171, *supra*].

S. 192. Where under the memorandum of association of a company the preference shareholders are entitled to return of capital in a winding up in priority to all other shareholders, the unpaid portion of the shares held by the ordinary shareholders can be called up to repay to the preferential shareholders the amount of their capital after the payment of all the debts of the company. But the preference shareholders are not entitled to dividends when the company has made no profits at all—*D'Cruz v. Viswanathan* (1941) M. 806, (1941) 2 M. L. J. 94.

S. 199. If a consent order provides for the enforcement of a guarantee clause in execution, it can under s. 199 be enforced in the same manner in which decrees in any suit pending in the Court can be enforced—*Probodh Lal v. Chandan Mull* (1941) 46 C. W. N. 98 (104).

S. 212, sub-s. (1), cl. (b) read with s. 179, cl. (b). By virtue of s. 191 (1) (b) and s. 248 (1) (b) of the English Companies Act, 1929 (corresponding to s. 179, cl. (b) and s. 212 (1) (b) of the present Act) a liquidator in a voluntary winding up may without sanction carry on the business of the company, so far as may be necessary for its beneficial winding up. If in the proper exercise of this statutory power the liquidator incurs obligations, those to whom he incurs them are entitled to be paid out of the assets of the company in priority to those who were creditors at the beginning of the winding up, and it makes no difference whether the obligations are in respect of rents, rates or goods. If the conditions referred to above have been satisfied, the post-liquidation creditors come first, and if not, their claims cannot be entertained until the pre-liquidation creditors' claims have been satisfied. There is no question of the two classes ranking *parri passu*—*Great Eastern Electric Co.* (1941) 165 L. T. 366. It is sufficient if the liquidator formed *bona fide* and reasonably the opinion that the carrying on of the business was necessary for the beneficial winding up of the company. No objective standard by which the liquidator is to be judged should be set up after the event—*Ibid.*

S. 227, sub-s. (2). Where during the pendency of a winding up proceeding a bank agrees to employ a cashier and to transfer his unsecured deposit in the bank into a security deposit and does so transfer it, the whole transaction is void under this sub-section. Inasmuch as the cashier obtained an undue advantage over his fellow creditors, the Court would not validate the disposition by giving it its sanction—*Ram Lal v. O. L., Benares Bank* (1942) A. W. R. (H. C.) 7, (1942) A. L. J. 78.

S. 229. There is no power to waive by agreement the statutory right of set off given by s. 31 of the English Bankruptcy Act, 1914, the terms of which are imperative—*Victoria Products, Ltd. v. Tosh & Co., Ltd.* (1941) 165 L. T. 78.

S. 229. An employee of a company deposited in its general accounts a certain amount as security for the discharge of his obligations. It was agreed between the parties that the employee would get interest on this money and the money would be a second charge on the machinery and other assets of the company: *held* that the agreement clearly indicated that the parties never intended that the security money should be treated as a segregated fund in trust for the employee or that it was not to be utilised by the company for any purpose—*Maheshwari Brothers v. Indra Sugar Works* (1942) A. 119 F. B., 1942 A. L. J. 75. For the test whether such a deposit money is to be held as a trust fund or not see this case.

S. 234. Under this section the Court has wide powers, and it can sanction a compromise between different parties before the Court—*Probodh Lal v. Chandanmull* (1941) 46 C. W. N. 98. An order passed on consent in a winding up proceeding cannot be challenged by a consenting party in a separate suit—*Ibid.*

S. 235. This section does not *prima facie* exclude non-feasance. The section would apply to every act whether of commission or omission which is a breach of duty to the company in consequence whereof loss to the company results. To become a director by accepting a gift of shares is a misfeasance. Where such a person continues to act as a director and inspite of the auditor's report exposing the fraud of the company does not make any enquiries or take steps, but joins in a resolution condemning the auditor's report and signs the balance-sheet sanctioning the remuneration to the managing agents, he is guilty of gross and wilful negligence and clearly of misfeasance—*Subbayya v. Machayya* (1942) 1 M. L. J. 207.

Where a director signed a prospectus without caring to ascertain what the antecedents of the other directors were or how the company was going to be worked or who the partners of the managing agents were, but twelve days before the declaration under s. 103 was sent to the registrar and before the company commenced business he resigned: *held*, that in the circumstances it could not be said that he was guilty of any misfeasance by reason of which any pecuniary loss was sustained by the company—*Ibid.*

S. 237. The whole scheme of s. 237 appears to be enabling rather than mandatory or exclusive. The Court may order the liquidator to prosecute or refer the matter to the registrar. He may refuse to prosecute and the liquidator with the previous sanction of the Court may prosecute, but the section is not limited to the criminal liability of the directors under the Companies Act and so the section is not limited to special offences created by the Act—*Emperor v. Vishwanath* (1942) S. 9.

S. 243. Having regard to the fact that neither party to an application under s. 294(1) of the English Act of 1929 (corresponding to s. 243 of the present Act) can control the date when the Court makes its order, the two years referred to in the section must be calculated from the date of the dissolution of the company to the date of the issue of an application under the section—*In re Scad, Ltd.* (1941) 165 L. T. 108.

S. 278. As there are no provisions to the contrary in the Companies Act, the taking cognizance of an offence under the Act must be governed, as in the case of an offence under the Penal Code, by s. 190 of the Code of Criminal Procedure which contains no restriction with regard to the person who may lay a complaint [*In re Ganesh Narayan* (1889) 13 Bom. 600 followed]. Accordingly a private person has *locus standie* to file a complaint for an offence under the Companies Act. G. O. No. 518 of 6th June, 1916 and G. O. No. 3070 of 23rd August, 1932, though permitting the registrars to file complaints, do not restrict the Magistrate in the exercise of his powers under s. 190 Cr. P. Code. There is no legal objection to the proceedings being dropped by the Magistrate, if he finds that he ought not to have taken cognizance of the offence—*Muthu Veeran v. Mottayan* (1942) 1 M. L. J. 230. See also *Emperor v. Vishwanath* (1942) S. 9.

S. 280. No appeal lies from an order under this section dismissing a petition for taking security—*Vendurumudi v. National Assurance Co.* (1941) M. W. N. 81.

S. 282. S. 137 has no application to a prosecution for an offence under s. 282, nor does s. 138 or s. 141A bar a prosecution upon a private complaint of an offence under s. 282—*Emperor v. Vishwanath* (1942) S. 9.

S. 282B. As to what is trust money see *Rama Krishna v. Official Liquidator* (1941) 2 M. L. J. 910.

Reg. 72. A director or a managing director is in no way a servant of the company: he is the agent of the company for carrying on its business—*Gulab Singh v. Punjab Zamindara Bank* (1942) L. 47, 43 P. L. R. 619, reversing on this point (1940) L. 243.

The principles applicable to the issue of an injunction at the instance of a dismissed servant ought also to apply in the case of a dismissed agent, e.g. a managing director—*Ibid.*

Reg. 88. Unless a construction of the articles leads to the conclusion that there was an intention to supersede the ordinary rule, it must be held that where no quorum has in fact been fixed, the acts of the major part of the directors for the time being are valid—*Ganesh Flour Mills Co. v. Jag Mohan* (1941) 44 P. L. R. 15.

CORRIGENDA.

Page 25. Cl. 12 "prescribed". For "Governor-General in Council" read [*Central Government*].

Page 37. After the para beginning with '(11) **"Officer"**,' insert the following:—'(12) **"Prescribed"**. In this clause for the words "Governor-General in Council" the words "Central Government" have been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937."

Page 135. Case note 3. Surendra v. Kalipada. For "43 C.W.N." read "45 C. W. N."

Page 164. Last para, 3rd line. For "special resolution" read "ordinary resolution".

Page 286. After "Bank of India" delete "Bank of Taiwan".

Page 286. Aftar "Grindlay & Company, Ltd." insert "Habib Bank".

Page 287. After "Mercantile Bank of India" delete "Mitsui Bank" and after "U. Rai Gyaw Thoo & Co." delete "and Yokohama Specie Bank."

Page 370. Before the heading "*Arbitration and Compromise*", for "*Vide* India Gazette of 17th January, 1914," read "*Vide* India Gazette of 22nd February, 1941 Part I, pp. 251 *et seq.* and App. E *post*".

Page 834. Second line. For "Register or mortgages" read "Register of mortgages".

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ACHAMBEY TRADING CORPORATION LTD.
Srinagar-Kashmir.

INTRODUCTION.

Preliminary.

The history of legislation regarding companies, as opposed to mere partnerships, has been shortly delineated in the beginning of this book, namely, at pages 15 and 16. The present Act, that is, Act VII of 1913 was based on, and almost a verbatim reproduction of, the English Companies Act of 1908 which was a consolidating Act. In 1929 this English Act was thoroughly overhauled and another consolidating Act was passed not only altering the arrangement of the sections of the previous Act, but introducing as many as 94 new sections and making amendments in 125 out of 296 sections of the Act of 1908.

This as well as a growing demand, which became more and more insistent since the passing of the English Act of 1929, for making more stringent provisions regarding the powers, duties and responsibilities of directors and managing agents, resulted in the passing in India of the Companies (Amendment) Act of 1936.

The Companies (Amendment) Act, 1936.

This amending Act, namely, the Act No. XXII of 1936 has not taken the form of a consolidating Act, and has not therefore altered the arrangement of the sections of the Act of 1913, but has introduced provisions most of which are verbatim copies of the new provisions of the English Act of 1929, although there are certain provisions and amendments for the purpose of dealing with problems peculiar to this country. Some special provisions relating to banking companies have also been made taking into consideration the recommendations of the Central Banking Enquiry Committee.

Commencement of the Companies (Amendment) Act, 1936.

This amending Act received the assent of the Governor General on 27th October, 1936. Sub-section (2) of section 1 of the Act provided : "It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf." This notification was published in the said Gazette of 28th November, 1936 which stated : "The Governor General in Council is pleased to appoint the 15th January, 1937 as the date on which the said Act shall come into force"—See Notification No. 24 (23)—Tr. (C.L.) dated 28th November, 1936 in Gazette of India dated 28th November, 1936, Part I, p. 1492.

In this book the provisions introduced by the Companies (Amendment) Act, 1936 have been incorporated in the sections, Tables and Forms of the Act VII of 1913 and have been put in italics. The nature and effect of the amendments have briefly been indicated in this Introduction.

Subsequent Amendments.

Thereafter the following further amendments have been made by :— Act XX of 1937 amending s. 93 and repealing sub-s. (1C) of that section; the Government of India (Adaptation of Indian Laws) Order, 1937 amending ss. 6, 7, 8, 11, 87C, 109, 232, 245 and 286, and inserting cl. (17) in s. 2, and the new ss. 2A, 42A and 289A; Act II of 1938 amending ss. 17, 34, 86D, 86I, 87D, 102, 130, 134, 153A, 237, 277, 277D, 277E, 277F, 277I, 277M, 284, regulations 56, 77, 106, 109, 116 of Table A, Form I in the Second Schedule and Form F in the Third Schedule; Act XXXIV of 1939 amending ss. 83, 107 and 207; Act XXXII of 1940 amending ss. 152 and 208C; Act XXXVI of 1940 inserting the new s. 244B. All these amendments &c. have been incorporated in their appropriated places in italics within square brackets inorder to distinguish them from the amendments introduced by Act XXII of 1936. The War Donations and Investments (Companies) Act XXXVII of 1940 has been given as App. A (see p. 795) and the Indian Companies (Amendment) Act XXVI of 1941 amending ss. 104 and 282B has been printed as App. M (see p. 1199).

Trading Corporations.

The definition of a "trading corporation" has been introduced by the Government of India (Adaptation of Indian Laws) Order, 1937. See the new cl. (17) of sub-s. (1) of s. 2. For the meaning of the expression see notes on p. 42. For the necessity of defining a "trading corporation" see the new s. 289A (at p. 660) which has also been inserted by the aforesaid Order. This section says that powers conferred by the Companies Act on the Central Government shall, in relation to non-trading corporations with objects confined to a single Province, be powers of the Provincial Government. But as regards trading corporations the powers will always be those of the Central Government, even if the objects of these corporations are confined to a single Province.

Companies whose registered offices were in Burma and Aden.

Since the separation of Burma and Aden from India companies whose registered offices were at the date of separation at those places are deemed to be companies registered and incorporated outside British India and as such will not be included in the expressions "company," "existing company," "public company" and "private company". See the new section 2A at p. 43 and note thereunder. In this connection see also the new s. 42A at p. 151.

Illegal Associations.

No company, association or partnership, consisting of more than ten persons in the case of a banking business, and of more than twenty persons in the case of any other business, the object of which is the acquisition of gain, can be legally formed unless it is registered under the present Act or is formed in pursuance of an Act of Parliament or some other Indian law or Royal Charter or Letters Patent. So partnerships consisting of more than the aforesaid numbers of persons, unless so registered, will be illegal associations with all their consequent risks and disabilities (see s. 4 and notes at pp. 49-55).

Amendments made in s. 4.

By the amending Act of 1936 the new sub-ss. (3), (4) and (5) have been added. Sub-s. (3) says that this section shall not apply to a joint family carrying on a joint family trade or business. But where two or more such joint families form a partnership they will, it is apprehended, come within the mischief of this section, and in computing the number of persons the minor members of such families will be excluded.

Sub-s. (5) provides that every member of such illegal associations will be punishable with fine not exceeding Rs. 1000.

Sub-s. (4) says that every member of such an association carrying on business will be personally liable for all liabilities incurred in such business. For effect of the amendments see pp. 49-50.

Companies Authorized to be Incorporated.

Companies authorized to be incorporated under the present Act may be, (*a*) companies limited by shares—these must have share capitals divided into shares of a fixed amount [see ss. 5 (i) and 6 (1) (v)], (*b*) companies limited by guarantee—these may be with or without share capital [see ss. 5 (ii) and 7] and (*c*) unlimited companies [see s. 5 (iii) and 8]—these may also be with or without share capital [see s. 8 (2)]. These companies may be either public companies or private companies. See s. 5. For the definition of a public company see the new Cl. (13A) and for the definition of a private company see the new Cl. (13) of sub-s. (1) of s. 2 at pp. 25 and 26.

Companies formed under the previous Indian Acts or in pursuance of an Act of Parliament or of Letters Patent may be registered under the present Act in accordance with the provisions of Part VIII, even if the sole object of such registration be that the companies may be wound up.

An unregistered company as defined in s. 270 including any partnership, association or company consisting of more than seven members may also be wound up as provided in part IX of the present Act.

The companies authorised to be *incorporated*, (as distinguished from *registered*) under the Act must state in the memorandum of association, (i) the name of the company, (ii) the province in which the registered office of the company is to be situated and (iii) the objects of the company, and except in the case of "trading corporations" [for definition see the new cl. (17) of sub-s. (1) of s. 2], the territories to which they extend. If the company has a share capital (which is obligatory in the case of a company limited by shares) the memorandum must state the amount of share capital with which the company is proposed to be registered, and the division thereof into shares of a fixed amount. Each subscriber must write opposite to his name the number of shares he takes, but he cannot take less than one share.

In the case of a company limited by shares or a company limited by guarantee the memorandum shall also state that the liability of the members is limited.

In the case of a company limited by guarantee the memorandum must comply with the provision of s. 7, sub-s. (1) (v).

In the case of an unlimited company the memorandum should comply with the provisions of s. 8.

Any company already registered as a limited company may re-register under the present Act, and a company already registered as an unlimited company may register itself as a limited company (s. 67).

As to the companies authorized to be registered under the present Act and the provisions therefor see Part VIII of the Act.

Objects of a Company.

The question whether a company should be incorporated as a company limited by shares, or a company limited by guarantee or an unlimited company generally depends upon the object for which it is going to be formed. If the object is to promote commerce, art, science, religion, charity or any other useful object and not to pay any dividend to its members, it may be formed as a limited company under s. 26 of the Act. On registration such a company will enjoy all the privileges of limited companies and be subject to all their obligations except those of using the word "Limited" as a part of its name, of publishing its name and of filing a list of members and directors and managers with the registrar of companies. Such companies are usually registered as companies limited by guarantee. For the fees to be paid for registration of such a company under s. 26 see Table B, II (p. 761 and App. E. (p. 811). Other Companies limited by guarantee are not entitled to these privileges.

As observed in Palmer's Company Law [13th ed. (1929) p. 404] "Companies with unlimited liability are rarely formed now. While limited companies have been increasing by 'leaps and bounds', unlimited companies have dwindled nearly to zero."

Where the object of a company, association or partnership or any individual member thereof is to carry on a business for the acquisition of gain, it must be registered under the present Act or some other Act &c. mentioned in s. 4, if it consists of more than ten persons in the case of a banking business and more than twenty persons in any other case. Otherwise it will be an illegal association with all its risks and disadvantages (see s. 4 and notes, at pp. 49-55).

Generally speaking a limited company is formed for the following purposes :—(1) to carry on a contemplated new business or a number of new businesses; (2) to acquire an existing business; (3) to convert business owned by a single individual or a firm into a limited company; (4) to form a syndicate for the purpose of working a patent, option or concession or developing an infant industry and then to sell it at a profit to a new company promoted by the syndicate or to any other company.

Formation of Companies Limited by Shares.

So that a company may be launched, some person or persons must conceive the idea, give it a practical shape, and take steps to get it registered and try to secure the necessary share capital. The person or persons who do this are called promoters of the company. For the meaning of the term "promoter" and his duties, obligations and liabilities see notes to s. 100 (pp. 273-278).

If the idea is to acquire and carry on an existing business, the promoters should think out in consultation with the vendors the following details and settle them in writing :—(1) the amount of money for which the vendors are willing to sell the business with its goodwill, plant, machinery and all movable and immovable property in connection with the business ; (2) the amount required to set it a-going and to meet the working expenses ; (3) the amount necessary for carrying out urgent improvements ; (4) the authorized share capital with which the company is to be registered ; and (5) the amount of the probable preliminary expenses (as to what are preliminary expenses see p. 261).

Name of a Company.

When all these have been satisfactorily settled a suitable name, under which the company is to be registered, should be selected. Where the goodwill of the business to be acquired is of any value, the name in which it is carried on may be retained with the addition of some other suitable words and "Limited" as the last word.

Where it is necessary to give a new name to the company the provisions of s. 11 should be complied with (see notes, pp. 77-79). For the names which a company is forbidden to take see the new sub-s. (3) of s. 11. After selecting a name it is better to secure the approval of the registrar of companies before the printing of the memorandum of association &c. so that it may not clash with that of a company in existence. But if such a company is in the course of being dissolved, its consent may be obtained to adopt the name (for form of such consent see Form 72, p. 1149).

Agreement with Vendors.

Now it is time to enter into an agreement with the vendors for acquiring the business. Before incorporation of the company this is usually done by the promoters on behalf of the company. Such a contract is valid and specific performance thereof may be enforced against the company, provided that the company has ratified and adopted the contract and that the object clauses of the memorandum of association warrant it [see s. 27, cl. (e) of the Specific Relief Act (I of 1877)]. For form of such an agreement see Form 1 (p. 1090), and for form of adoption thereof see Form 2 (p. 1092).

An agreement to sell a business may also be made with the company after its incorporation (see Form 3, p. 1092).

It should be remembered, however, that whether the agreement is made before or after the incorporation, it is provisional only and not binding on the company until it gets from the registrar the certificate for commencement of business [see s. 103, sub-ss. (2) and (3)].

As to the agreement to issue fully paid shares to vendors see Form 8 at p. 1095.

Memorandum of Association.

The memorandum of association must be printed, divided into paragraphs numbered consecutively and signed by each subscriber (who must add his name, address and description) in the presence of at least one witness who is to attest the signature. The signature of a subscriber cannot be attested by another subscriber. See the new s. 9 and notes.

For the contents of the memorandum of association of a company limited by shares see s. 5 and Form A, p. 773. For the specimen of a complete memorandum with all necessary object clauses in the case of a company formed to purchase an existing business as a going concern see Form 9, pp. 1095-1097, and for that of a company intended to do general business see Form 10, pp. 1098-1100.

(1) *Name in the memorandum.*

The memorandum should contain, the name of the company with "Limited" as the last word. As regards the selection of the name see p. [5] above. A company may, by passing a special resolution and with the approval of the Government, change its name [see s. 11 (4) and notes at p. 79]. Where a company is, through inadvertence or otherwise, registered with a name identical with or similar to that of an existing company, it may be changed with the consent of the registrar of companies [see s. 11 (2)]. In such cases a fresh certificate of incorporation is to be obtained from the registrar [see s. 11, sub-ss. (5) and (6)].

(2) *Province in which the registered office will be situated.*

Next, the province in which the registered office is to be situate, *e. g.*, Bengal, Bombay, &c., is to be stated in the memorandum. A company may by passing a special resolution change the registered office from one province to another subject to confirmation by the Court [see s. 12 (1) and notes thereto].

(3) *Objects of the company.*

Much care and circumspection is necessary in drafting the object clauses. The objects should be lawful and they must not offend against the provisions of the Act [*e.g.*, prohibition of purchasing its own shares and of giving financial assistance in connection with such purchases (s. 54A)], the general law (*e.g.*, running a lottery) or be immoral (*e.g.*, keeping a brothel) or opposed to public policy (*e.g.*, sale of public offices).

The memorandum must state the objects of the company and, except in the case of trading corporations as defined by s. 2A, the territories to which they extend [see s. 6 (1) (iii)].

The objects should be clearly and definitely expressed. It is not enough to say that the object of the company is to carry on any business which it may think profitable, for this defines nothing. In the case of a trading company the trade should be defined and not the various acts which it would be within the powers of the company to do in carrying on the trade. Wide powers taken in general terms will be construed as merely ancillary to the specific objects mentioned in previous clauses. But objects should not be confused with powers; the memorandum should state the *objects* of the company and not the *powers* (see pp. 61-62). In this view the power to borrow money need not be taken in the memorandum of association; it is sufficient if the power is taken in the articles of association. But it is safe to take the power in the memorandum, for a company other than a trading or a banking company has no implied power of borrowing (sse pp. 321-323).

In App. K specimens of the main object clauses of various companies are given (see Forms 16-62, pp. 1102 to 1115). These with additions and alterations may be used for drafting the objects clauses of the momorandum of association taking other suitable clauses from Forms 9 and 10 of App. K (see pp. 1102-1115).

Companies are often formed specially for acquiring and taking over the business of persons, firms or other companies or for amalgamating with other companies. For the first object clauses of such companies see Forms 12 to 15 (pp. 1101-1102).

(4) Limitation of liability.

The memorandum should state that the liability of the members is limited. In case a company limited by shares is wound up, a member will not be bound to pay any thing more than the amount unpaid on the shares taken by him [see s. 156, (1) (iv)].

(5) Capital clause in the memorandum.

The memorandum must also state the amount of share capital with which the company is proposed to be registered and the division thereof into shares of a fixed amount. It is not necessary to state anything further. For at any time a company can by passing special resolutions take the powers to issue shares with preferred, deferred or other rights. But where it is intended to issue a particular class of shares with unalterable rights (*e.g.*, the founders' shares), the memorandum should state the number of such shares and the amount of each and should define the rights of such a class. For, if the memorandum defines the rights attached to a particular class of shares, they cannot be varied except with the sanction of the Court in a proceeding under s. 54 or s. 153, unless the memorandum also gives the power to alter such rights (see pp. 69-71). In this connection see the new s. 66A.

The classes into which the shares are divided and their respective rights regarding dividends and voting are more properly stated in the articles of association. Therefore the question of the capital clauses will be discussed under the heading "Articles of Association" *post.* But as these capital clauses defining the rights &c. of the respective classes of shareholders are generally included in the memorandum of association, forms of such capital clauses are given in App. K (see Forms 66-70, pp. 1146-1148). With the necessary alterations they may be incorporated in the articles of association.

(6) Association and subscription clause.

The association and subscription clause should be in the form given in Form A of the Third Schedule to the Act (p. 773) and each subscriber shall write opposite to his name the number of shares he takes, but he cannot take a fraction of a share. Any person except a minor, a lunatic or a firm in the firm name may be a subscriber to the memorandum of association (see pp. 56 and 58). In the signature the full name should be given. Address and occupation should also be explicitly stated. If the subscriber has no occupation, the fact should be mentioned. There must be at least seven subscribers except in the case of a private company where at least two are required. An agent may sign the memorandum on behalf of his principal where authority in this respect is given by the principal.

The signature must be attested by a person who sees the subscriber sign. If all the subscribers sign in the presence of one person he may attest all the signatures, otherwise different witnesses will be necessary. The signature of a subscriber cannot be attested by himself or by another subscriber. Names, addresses and descriptions of the subscribers and witnesses should be given [see pp. 73-74, Form A of the Third Schedule to the Act (p. 773) and Forms 9 and 10, pp. 1097 and 1100].

Alteration of the memorandum—amendments in ss. 10 and 12 —the new ss. 20 A and 25 A.

A company cannot alter the *conditions* contained in its memorandum except in the cases, in the mode and to the extent provided in the Act. But by an amendment in s. 10 it has been provided that any provision in the memorandum relating to the appointment of a manager or managing agent and other matters of a like nature, incidental or subsidiary to the main objects of the company, will not be deemed to be such condition. The object of this amendment appears to be to frustrate the designs of such managers, managing agents and secretaries as try to perpetuate their office by inserting clauses to that effect in the memorandum of association (see p. 74).

The memorandum of association can be altered only, (1) as to the change of the registered office from one province to another and (2) with respect to the objects within the limits mentioned in s. 12 by passing special resolution and obtaining the sanction of the Court [see s. 12 including the new clauses (f) and (g) and s. 13 and notes to those two sections at pp. 80 to 84]. A certified copy of the order confirming the alteration with a printed copy of the memorandum as altered should be filed with the registrar within 3 months of the order for registration upon which only the alteration will take effect (see ss. 15 and 16).

The new s. 20A provides that no member shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares or in any way increases his liability, unless the member agrees in writing to be bound by the alteration.

The new s. 25A provides that when an alteration is made in the memorandum or articles every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration, and sub-s. (2) provides penalty for contravention of this provision.

Stamp and fees.

As to the stamp for the memorandum of association see App. L (p. 1197) and as to the fees to be paid to the registrar of companies for registration see Table B, pp. 760-762. The stamp must be affixed before the memorandum is signed.

Articles of Association.

The articles of association contain the regulations of the company. They must not contain anything which is against, or repugnant to, the provisions of the Act, nor should they go beyond the scope of the memorandum of association to which they are subordinate. For their respective functions and other matters relating to the articles see s. 17 and notes thereto.

In the case of a company limited by shares it is not obligatory to register any articles of association. If they are not registered, the provisions of Table A will automatically apply to the company (see s. 18 and notes). A new set of articles for the management of the company may be and often is registered excluding Table A altogether or in part, for the provisions of Table A will apply to a company in so far as its articles do not exclude or modify them (see s. 18).

The articles must be printed, be divided into paragraphs numbered consecutively and signed by the subscribers to the memorandum (who must add their addresses and descriptions) in the manner the memorandum is to be signed [see the amended s. 19 and pp. (7-8) *ante*].

The articles by numbered clauses should make provisions as to (1) the exclusion, total or partial, of Table A ; (2) definition of important words and phrases; (3) adoption or execution of a preliminary agreement, if any ; (4) capital clauses specifying the different classes into which the share capital of the company will be divided and defining the rights of the respective classes regarding dividends, bonuses, voting and modification of those rights ; (5) allotment of shares ; (6) share certificates ; (7) calls ; (8) forfeiture, surrender and lien ; (9) transfer and transmission of shares ; (10) increase and reduction of capital ; (11) consolidation and sub-division of shares ; (12) borrowing ; (13) general meetings, proceedings thereof and votes of members ; (14) management ; (15) directors, their qualifications, remuneration &c., and board meetings ; (16) dividends, reserve and depreciation funds ; (17) accounts and audit ; (18) common seal ; (19) notices and (20) special provisions in the winding up.

Unless powers are taken in the articles the following things cannot be done :—(1) keeping branch register in the United Kingdom (s. 41) ; (2) issuing share warrants to bearer (s. 43) ; (3) making arrangement for a difference between shareholders in the amounts and times of calls (s. 49) ; (4) accepting amounts on shares, though not called up (s. 49) ; (5) paying dividends in proportion to the amounts paid up on shares (s. 49) ; (6) increasing the share capital by the issue of new shares (s. 50) ; (7) consolidating and dividing the share capital into shares of larger amounts (s. 50) ; (8) converting any paid up shares into stock and re-converting that stock into paid up shares of smaller amounts (s. 50) ; (9) subdividing the shares (s. 50) ; (10) cancelling shares not taken or agreed to be taken (s. 50) ; (11) reducing the share capital (s. 55) ; (12) increasing and reducing the share capital (if any) of a company limited by guarantee (s. 66) ; (13) varying the rights attached to any class of shares (s. 66A) ; (14) rendering the liability of the directors unlimited (s. 71) ; (15) allowing proxies to vote and demand a poll at a general meeting (s. 81) ; (16) providing for the appointment of directors, filling up casual vacancies among them and their qualifications (see ss. 83B, 84 and 85) ; (17) having official seal for use at a place outside British India (s. 91) ; (18) fixing the minimum subscription [s. 101, sub-ss. (1) to (2A) and (7)] ; (19) paying commission for placing shares (s. 105) ; issuing redeemable preference shares (s. 105B) ; (20) paying interest out of capital in certain cases (s. 107) ; (21) closing register of debenture-holders for inspection (s. 125); and (22) converting a private company into a public company (s. 154).

In case any of the foregoing powers are not to be found in the articles of association, powers may be taken by passing special resolution. But it is better to have them in the original articles.

As to articles of association generally see s. 17 and notes thereto. A specimen of the articles of association of a company intended to be managed by managing agents and excluding Table A is given in Form 63 (pp. 1116-1130). For the forms of articles of a company intended to be managed by the directors see Form 64 (pp. 1130-1142) and those of a private company intended to be managed by the governing director see Form 65 (pp. 1142-1146).

Amendments in s. 17.

By the amendments in s. 17 it has been provided by the amending Act of 1936 that the articles of a company shall be deemed to contain regulations identical with or to the same effect as regulations 56, 66, 71, 78, 79, 80, 81, 82, 95, 97, 105, 107, 112, 113, 114, 115 and 116 contained in Table A of the Act. Of these, regulations 78 to 82, both inclusive, will not be deemed to be included in the articles of any private company except one which is the subsidiary company of a public company. It should be noted that regulations 97 and 107 have been amended by the said amending Act and regulations 56 and 116 have been amended by the amending Act II of 1938. It has been further provided that regulation 107 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion is charged against the income of the year, shall be shown in the profit and loss account, unless the company in general meeting shall determine otherwise. As to the nature of the contents of these regulations see pp. 87-89.

As the regulations mentioned in the last paragraph have been made compulsory, it is better to insert them in the articles of companies to be formed after the commencement of the amending Act.

As to other such compulsory provisions in the articles see sub-s (1) of the new s. 79 relating to the proceedings of a general meeting. These also should be kept in view in framing the articles of association. The provisions mentioned in sub-s. (2) of s. 79 shall have effect in so far as the articles of the company do not make other provisions in that behalf. This also should be kept in view in framing the articles of a company.

Alteration of Articles.

Subject to the provisions of the Act and to the conditions contained in the memorandum of association, a company can alter or add to its articles (s. 20). The only other limitations are that they must be altered in good faith and not to commit fraud on or to take an unfair advantage over a minority of shareholders. For other matters in connection with such alteration see notes to s. 20 at pp. 91-95.

As to the provisions of ss. 20A and 25A relating to the alterations of articles see p. [8], *ante.*

Capital clauses in the articles.

Where it is intended that the shares should be divided into several classes, *e.g.*, preference, pre-preference, or A preference, B preference, A ordinary, B ordinary, deferred, founders' or management shares, with special rights, privileges and conditions attached to them, the provisions to that effect should be made in the articles of association. For forms of such capital clauses see Forms 66 to 70 in App. K (pp. 1146-1148) which may be used with necessary modifications.

For a discussion as to the rights &c. of these different classes of shareholders see pp. 69 to 71 and 663-666.

Stamp.

As to the stamp on the articles of association see App. L (p. 1192). The stamp must be affixed before the articles are signed.

Consent and Qualification of Directors.

Every company except a private company must have at least three directors [see the new sub-s. (1) of s. 83A]. The promoters should settle the number, qualification and remuneration of the directors and approach suitable persons for their consent. If it is thought expedient to appoint the directors by the articles, their consent in writing signed by themselves or by their respective agents authorized in writing should be obtained. Where it is provided in the articles that a director must have certain number of qualification shares, he must either have subscribed for those shares in the memorandum of association or signed a contract to take from the company and pay for the qualification shares and filed the same with the registrar or taken from the company and paid for or agreed to pay for his qualification shares or made and filed with the registrar an affidavit to the effect that a number of shares not less than his qualification is registered in his name (see the amended s. 84). This last provision makes it possible, it is apprehended, to acquire his qualification shares, if he can so secure it, without paying for them in cash. A list of persons who have thus consented to be directors of the company should also be prepared and filed with the registrar (see s. 84 and notes at pp. 223-224). S. 84 does not however apply to a private company or a company which was a private company before becoming a public company [see sub-s. (3) of s. 84].

For the form of directors' consent see Form IX, App. E, pp. 822-823, for that of contract to take the qualification shares see Form XI, App. E, p. 824 and that of the list of directors who have thus consented see Form X, App. E, p. 823.

Registration.

For registration of a company the following documents should be filed with the registrar of companies for the province in which the registered office is to be situate, namely :—

1. The memorandum and the articles of association (if articles are prepared) duly signed (in the case of a private company by two and in any other case by seven subscribers at least) and properly attested as stated above and stamped.

2. Statutory declaration under s. 24(2) of an advocate or attorney of a High Court (for meaning of High Court see p. 45), or of a director, manager or secretary of the company who has been named as such in the articles (see Form I, App. E, pp. 814-815).

3. Directors' consent under s. 84 (see Form IX, App. E, pp. 822-823).

4. Agreement by directors to take qualification shares under s. 84 (see Form XI, App. E, p. 824), if the directors have not signed the memorandum for the number of qualification shares.

5. List of directors who have thus consented (s. 84). For form see Form X, App. E, p. 823.

Along with these proper fees for registration (see Table B, pp. 760-762) should be paid.

Upon registration the registrar will give a certificate of incorporation and from the date of incorporation, as mentioned in the certificate, the subscribers and other persons, who subsequently become members, form a body corporate having an altogether separate existence, perpetual succession and a common seal (see s. 23 and notes, pp. 100-104).

The memorandum and articles upon registration become a contract binding the company and the members, their heirs and legal representatives to observe all the provisions thereof (see s. 21 and notes at pp. 96-99).

A member is entitled, on payment of one rupee or such less sum as may be prescribed in the articles, to a copy of the memorandum and also of the articles, if articles are registered. The copy must be sent within 14 days of the request (see the amended s. 25).

Situation of Registered Office and Changes therein.

The new s. 72 provides that a company must have a registered office as from the day on which it begins to carry on business or as from the 28th day after the date of incorporation whichever is the earlier, for a private company is entitled to commence business as soon as it is incorporated.

In the case of all companies, including a private company, notice of the situation of the registered office and of any change therein must be given within 28 days after their incorporation, or of the change, to the registrar (see Form VI at p. 818 and Form 73 at p. 1150). The inclusion in the annual return of the statement as to the address of the registered office will not satisfy the obligation imposed by s. 72. For the consequences of contravention of these provisions see sub-s. (6) of s. 72.

Where in pursuance of s. 41 a company keeps a British register of members, it shall within one month from the date of opening such register file with the registrar a notice of situation of the office where such register is kept and any change or discontinuance thereof. For form of such notice see Form II at p. 815.

Common Seal and Publication of Name &c.

A company must get its common seal prepared in which its name is engraven in legible characters [s. 73 (b)]. It is better to have one the impressions from which may be obtained by lever movements. For ordinary purposes, in addition, rubber stamps may be used, one containing the name of the company and others containing words and phrases in daily use in the company's transactions and correspondence, such as "For & on behalf of the......Limited," "copied," "cancelled," "& Co." (for the purpose of crossing a cheque) &c., &c.

A company should also have its name displayed in a conspicuous position on the outside of its registered office as well as other places where its business is carried on, as provided in cl. (a) of s. 73. It should further have its name mentioned (preferably printed) in legible English characters in all bill-heads, letter paper, notices, advertisements and other official publications of the company, as well as on all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money and goods, bills of parcels, invoices, receipts and letters of credit of the company (s. 74).

Where any notice, advertisement, &c. contain a statement of the authorized capital of the company they should show in equally prominent position and equally conspicuous characters the amount of capital which has been subscribed and the amount paid up (s. 75).

As to the proof of seal, power to affix it and the documents which require a seal see pp. 119-120 and 724, and as to the form of affixing seal and that of the register of documents sealed see Forms 83 and 84 at pp. 1152 and 1153 respectively.

Contracts.

Contracts which are required to be made in writing may be made on behalf of a company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied and discharged. Contracts which may be made by parol only may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged (see s. 88 and notes at pp. 239-241). A bill of exchange, hundi or promissory note, if made, drawn, accepted or endorsed on behalf of a company by any person acting under its authority, express or implied, will bind the company, provided the company, by its constitution, has express or implied power to make, accept, indorse or issue bills of exchange, promissory notes and other negotiable instruments (see s. 89 and notes at pp. 241-243). The directors or other officers who act for the company in these matters should take care that it is clearly expressed to be done for and on behalf of the company, otherwise they may find themselves personally liable (see notes at pp. 241-242).

Every manager or other agent of a company other than a private company, not being the subsidiary company of a public company, who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal must, at the time of entering into the contract, make a memorandum in writing of the terms of the contract and specify therein the person with whom it has been made. The manager or agent must immediately deliver the memorandum to the company to be filed and laid before the next board meeting and send copies to the directors, otherwise the contract will be void as against the company. See the amended s. 91D. As to the penalty for default see s. 91D (3).

Ordinarily contracts on behalf of a company do not require to be made under its common seal which is made use of on special occasions such as sealing the share certificate, power of attorney, &c.

As to the execution of deeds abroad and power for a company to have official seal for use abroad see ss. 90 (amended) and 91.

Books and Accounts.

Every company must cause to be kept proper books of account with respect to (a) all receipts and expenditures of money, (b) all sales and purchases of goods, and (c) the assests and liabilities of the company [sub-s. (1) of s. 130]. The books of account must be kept at the company's registered office or at such other place as the directors think fit. They shall be open to inspection by the directors during the business hours [sub-s. (2)]. As regards the books of account of branch offices see sub-s. (3) of the new s. 130. For the consequence of default by the managing agent, his partners and others and the directors see sub-s. (4) of the new s. 130.

The following are some of the important books :—

The Journal.
Cash Book.
Petty Cash Book.
Ledger.
Fees Book.
Dividend Account Book.

In addition a company should keep the following books and registers : Index of members (see the new s. 31A).

Register of Members.
„ „ Debenture-holders.
„ „ Transfers of shares.
„ „ „ „ debentures.
„ „ Mortgages and charges.
Register of Documents.
„ „ Share-Warrants.
„ „ Directors, Managers and Managing agents (see the new s. 87).
„ „ Securities.
„ „ Calls.
„ „ Letters received and despatched.
„ „ Shares (numerical).
„ „ Applications and Allotments.
„ „ Board Meetings.
Minute Book of Board Meetings.
„ „ „ General Meetings.
Share Certificate Book.
Seal Book.
Annual Summary of Capital Book.
Agenda Book.
Directors' Attendance Book.
Cable Book (in commercial companies).
Members' Address Book (in alphabetical order).
Specimen Signature Book „

Statement by Banking and some other Companies.

A banking company, an insurance company, or a deposit, provident or benefit society, must, before it commences business and also on the first Mondays in February and August every year during which it carries on business, make a statement in Form G in the Third Schedule (see p. 792). A copy of the statement together with a copy of the last audited balance-sheet laid before the members should be displayed and, until the display of the next following statement, kept displayed in a conspicuous place at the registered office of the company, and at every branch office or place where the business of the company is carried on. Every member and creditor of the company will be entitled to a copy of the statement on payment of a sum not exceeding 8 as. (amended s. 136). As to the penalty for default in complying with the above requirements see s. 136 (4).

Directors.

Where the directors have not been named in the articles and subject to the provision (if any) for the appoinment of directors therein, the subscribers of the memorandum of association shall be deemed to be the first directors of the company until the directors are appointed in a general meeting (s. 83 B) and any casual vacancy among them may be filled up by the directors subject to the provisions of s. 83 B (iii).

Where the articles provide, as in reg. 68 of Table A, that the number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association, they should forthwith proceed to fix the number of and to appoint the directors, for the names of the directors or proposed directors are to be given in the prospectus [s. 93 (1) (c)] or the statement in lieu of prospectus [s. 98 (1)]. This may be done either at a meeting of the subscribers called for this purpose or by a statement in Form 74, App. K, p. 1150.

If the directors are required to hold qualification shares, a director must obtain them within two months after his appointment or such shorter time as may be fixed by the articles (s. 85), and in default he will cease to be a director and shall be incapable of being re-appointed until he has obtained the qualification [see the new s. 86 I (1) (a)]. After he has thus ceased to be a director if he acts as such, he will be liable to the penalty provided in s. 85 (2). But the acts of a director will be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification (s. 86).

The company should keep a register of its directors and managers and managing agents (see the new s. 87 and Form XII, App. E, pp. 824-825) and file with the registrar a copy thereof and from time to time file with the registrar notice of any change among the directors and managers and managing agents (Form XII, above). For consequences of default see s. 87 (5).

The new s. 87 provides that the company shall within 14 days from the date of appointment of or any change in the directors, managers and managing agents send to the registrar a return and notification of change in Form XII (see pp. 824-825). It further provides that the register to be kept under this section shall be open to the inspection of any member without charge and of any other person on payment of one rupee or such less sum as the company may impose for each inspection. As to the penalty for default see sub-s (4) of s. 87. In case of refusal the Court may direct an immediate inspection [see sub-s. (5) of s. 87].

S. 91A (1) provides for the disclosure of a director's interest in any contract or arrangement entered into with the company at the meeting of directors. Sub-s. (2) of that section mentions the penalty for contravention of the above provision.

As regards the position, powers, duties, obligations and liabilities of directors see notes at pp. 36, 209-223, 244-250, 274-283, 583-590, 594-602, 650-658, 711-719 and 748-749.

In a limited company the memorandum of association may provide that the liability of the directors or any of the directors will be unlimited. In such a case notice is to be given to the director before he accepts the office that his liability will be unlimited, and in default the proposer will be liable to penalty (see s. 70). Where the memorandum does not contain the provision, it may be inserted therein by special resolution, if so authorized by the articles (s. 71). The power in the articles may be taken by altering it under s. 20. Where the memorandum is so altered by special resolution, a copy thereof should be embodied in or annexed to every copy of the memorandum issued after the date of alteration (see s. 25A).

New Provisions relating to Directors.

The amended s. 83A provides that except in the case of a private company which is not subsidiary company of a public company, every company shall have at least three directors.

The amended s. 83B provides that except in the case of a private company not less than two-thirds of the whole number of directors shall be persons whose period of office is liable to determination by retirement in rotation. This restriction will not however apply to a company incorporated before 15th January, 1937 where by virtue of articles of such a company the number of directors falls below the two-thirds proportion. It is doubtful if the company can exempt itself from the operation of this section by altering its articles after the above-mentioned date. The new s. 87-I provides that notwithstanding anything contained in the articles of a company other than a private company the directors, if any, appointed by the managing agent shall not exceed in number one-third of the whole number of directors.

As regards the obligation of a director to take his qualification shares see the amended s. 84 which is a reproduction of s. 140 of the English Act of 1929. See also p. [11] *ante*.

The new s. 86A following s. 142 of the English Act of 1929 provides heavy punishment for an undischarged insolvent person acting as a director, managing agent or manager of a company including one incorporated outside British India which has an established business within British India.

The new s. 86B following s. 151 of the English Act of 1929 prohibits assignment of office by a director or manager (where the articles or an agreement empower them to do so) except with the sanction of a special resolution. The proviso and explanation regarding the provision of alternate directors are not however in the English Act.

The new s. 86C which is a reproduction of s. 152 of the English Act of 1929 provides that any provisions in the articles, contract or otherwise for exempting any director, manager, officer or auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust shall be void. In respect of any such provision which is in force on the 15th January, 1937 this section had effect only on the expiration of six months from that date. But if a judgment is given in favour of such a person or if he is acquitted or a relief is granted to him under s. 281 the company may indemnify him.

The new s. 86D provides that no company, except a *private company* which is not a subsidiary company of a public company and except a *banking company*, shall not make any loan or guarantee any loan made to a director or to a firm of which such director is a partner or to a private company of which such director is a director or member. As to the punishment for contravention of this provision and as to the special liability see sub-s. (2) of this section.

The new s. 86E prohibits a director or a firm or a private company of which a director is a partner or a director, from holding any other office of profit than that of a managing director, manager, legal or technical adviser, banker, or managing agent. There is a saving in the proviso for a director elected or appointed before 15th January, 1937 in respect of an office of profit held by him on that date.

The new s. 86F prohibits a director or the firm of which he is a partner or any partner of such firm, or the private company of which he is a director or member, from entering into any contract for sale, purchase or supply of goods or materials with the company except with the consent of the directors thereof. This restriction will not however apply to such contracts entered into before 15th January, 1937.

The new section 86G makes provision for removal of a director whose period of office is liable to determination by retirement in rotation, by an extraordinary resolution and for appointment of another person in his stead by an ordinary resolution. The section will not however apply to directors elected or appointed before 15th January, 1937.

The new s. 86H provides that except with the consent of a general meeting, the directors of a public company or of a subsidiary company of a public company shall not (a) sell or dispose of the undertaking of the company, or (b) remit any debt due by a director.

The new s. 86-I states the events on the happening of which the office of a director shall be vacated. A company may of course specify in its articles any other ground for vacation of a director's office.

The new sub-s. (3) of s. 91A requires that every company must keep a register in which the particulars of all contracts or arrangements made with the company in which a director is interested should be entered and that the register shall be open to inspection by any member of the company. This last provision has been rightly characterised by the Bengal Chamber of Commerce as highly objectionable, as disclosure of such particulars may be prejudical to the interests of the company. Sub-s. (4) of that section provides penalty for contravention of this provision.

The amended s. 91B prohibits voting by an interested director in respect of the contract or arrangement in which he is interested directly or indirectly. This prohibition does not apply to the directors of a private company, but shall apply to one which is a subsidiary company of a public company in respect of contracts or arrangements with any person other than the holding company. For the definition of a subsidiary company see the new sub-s. (2) of s. 2.

For the statements relating to directors to be made in prospectus see the amended s. 93 and those to be made in the statement in lieu of prospectus see Forms I & II at pp. 762-770.

Under the new s. 130 the directors should see that proper books of account are kept with respect to (a) all sums of money received and expended by the company, (b) all sales and purchases of goods by the company and (c) the assets and liabilities of the company. For default in complying with this provision the managing agents, where the company is managed by them, and in other cases the directors will be liable to a fine not exceeding one thousand rupees.

Under the new sub-s. (1) of s. 131 it is the duty of the directors to lay before the company in general meeting every year a balance sheet and profit and loss account &c. mentioned in that sub-section. The new s. 131A provides that the directors shall make out and attach to every balance sheet a report with respect to the company's affairs and other matters mentioned therein. As to the penalty for default see sub-s. (3) thereof.

The new sub-s. (3) of s. 132 provides that the profit and loss account must include particulars showing the total of the amount paid whether as fees, percentages or otherwise to the directors as remuneration for their services. It further provides that if any director is by virtue of nomination, whether direct or indirect, of the company, a director of any other company, any remuneration or other emoluments received by him for his own use, whether as director of, or otherwise in connection with the management of, that other company, must be shown in a footnote to the profit and loss account.

The new s. 141A provides that if a director is convicted as the result of a prosecution initiated under that section upon a report under s. 138 he shall not, without the leave of the Court, be a director of or in any way concerned in or take part in the management of a company for five years from the date of such conviction. An application by a director, manager or other officer of a company for leave to act as a director or to take part in the management of the company under s. 141A must be made on notice to the company and the Advocate General or Public Prosecutor, as the case may be (Rule 39 at p. 863).

The new s. 177A provides that a statement as to the affairs of the company, verified by one or more persons who are directors, must be submitted to the official liquidator, provisional or otherwise, and if the liquidator so directs the statement should be submitted and verified by persons who *have been* directors of the company. As to the penalty for default see sub s. (5) of that section.

Under the new s. 207, where it is proposed to wind up a company voluntarily the directors are to make a declaratian of solvency verified by an affidavit for the purpose of a members' voluntary winding up. The new s. 209A provides that in a creditors' voluntary winding up the directors must cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the creditors' meeting which is to be presided over by one of the directors [see sub-s. (3)]. As to the consequences of default see sub-s. (6) of s. 209A.

By the new s. 237 a machinery has been provided for prosecuting present or past directors, if it appears to the Court in the course of a winding up by or subject to the supervision of the Court or to the liquidator in a voluntary winding up that they have been guilty of any offence in relation to the company for which they are criminally liable.

A considerable number of provisions has been introduced by the new s. 138A for punishing present or past directors of a company which at the time of the commission of the alleged offence is being wound up in any way or is subsequently ordered to be wound up or subsequently passes a resolution for voluntary winding up, if they do any act or omission mentioned in sub-s. (1) or (2) of that section.

Punishment is also provided in the new s. 282A for wrongfully obtaining possession of the company's property by a director, for wrongfully withholding possession and for misapplication of such property by a director. S. 282B provides penalty for misapplication by directors of the securities and provident funds of the employees of the company.

For a list of offences under the Act see App. H. (pp. 1080-1086), for a list of documents &c. to be filed with the registrar see App. I (pp. 1087-1088) and for a list of books &c. to be kept under the Act see App. J. (p. 1089).

It should be remembered that "director" includes any person occupying the position of a director by whatever name called [see cl. (5) of sub-s. (1) of s.2] and that the word "officer" includes a director [see s. 2 (1), (11)]. See also s. 2 (1) (9) & (9A).

As to the statements regarding directors to be made in a statutory report see the new s. 77.

Board Meetings.

In accordance with the provisions of the articles regarding the board meetings and proceedings thereat the directors should hold those meetings. A notice should be issued to the directors appointing the date, time and place of the meeting and the subjects for discussion. This notice may be signed by a director or the secretary (if any) or by the managing agents if they are empowered by the articles to call such meetings. As to the form of the notice see Form 75, App. K, p. 1150.

Soon after the registration of the company and the appointment of the directors urgent and inportant subjects should be brought before the board meeting, as for example, approval of the company's seal, custody of the keys thereof, appointment of chairman and managing director, appointment of bankers, auditors and secretary, adoption or approval of vendor's agreement (if any), quorum of board meetings, appointment of committees for dealing with particular matters, and delegation of authority to some of the directors, *e.g.*, for sealing share certificates, signing cheques, settling the prospectus &c., &c.

The directors may, if so authorized by the articles, as in Table A (see reg. 72), appoint one of their body to the office of managing director or manager. In such a case, also in the case of appointment of a secretary or managing agents, agreements should be entered into by the company with such managing director, secretary or managing agents defining their duties, remunerations, &c. As to the forms of such agreements see Forms 6 and 7 of App. K (pp. 1093-1095).

For the form of agenda of board meetings see Form 77, App. K at p. 1151. Before the meeting is held the secretary should prepare typed copies of the agenda paper keeping spaces for the names of the directors, and the chairman or the secretary's notes (see App. K, Form 77, p. 1151).

The secretary should take notes on the agenda paper of the proceedings and resolutions of the meeting and get them initialled by the chairman of the meeting. From these notes he will be able to write the minutes of the meeting in the minute book for board meetings. See s. 83 and notes thereto at pp. 207-208, where the importance of these minutes and the position and duties of the secretary have been discussed.

These minutes are ordinarily read and approved at the next meeting and signed by the chairman. For form of the minutes see Form 78, App. K at pp. 1151-1152. As to the specimens of resolutions see Forms 79 to 82 at p. 1152.

A register of board meetings held should be kept in Form 76 (p. 1151).

Disclosure of director's interest in a contract.

Every director who is directly or indirectly interested in any contract or arrangement with the company must disclose the nature of this interest at the first meeting of directors after the acquisition of his interest (see s. 91A and notes thereto) and he must not vote on any such contract or arrangement (s. 91B and notes thereto). A register must be kept in which particulars of all such contracts &c. should be entered [see the new sub-s. (3) of s. 91A]. As to the consequences of default see sub-s. (4) thereof.

In the case of contract for the appointment of a manager or managing agent of the company in which contract a director is directly or indirectly concerned or interested or in the case of variation of any such existing contract, a memorandum of the interest of the director and an abstract of the contract of variation must be sent to every member of the company and the contract shall be open to inspection of any member [s. 91C].

New Provisions relating to Managing Agents and Managers.

The expression "managing agent" has for the first time been defined by the Companies (Amendment) Act, 1936 [see cl. 9A, sub-s. (1) of s. 2]. The word "manager" was of course defined by the original Act (see p. 37), but that was no definition at all. The aforesaid amending Act has also put in a new definition of the word [see the new cl. (9) of sub-s.

(1) of s. 2]. For the distinction between a "manager" and a "managing agent" see p. 37.

The statutory report of a company must state the names, addresses and descriptions of the managing agents and managers, the arrears, if any, due on calls from them as well as from the directors and the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, managing agent or manager or a partner of the managing agent, if the managing agent is a firm or, if the managing agent is a private company, a director thereof [see s. 77 (3) (d), (g) and (h)].

Hitherto, if the articles so provided, the managing agents could nominate any number of directors who were not subject to retirement by rotation. But the new sub-s. (2) of s. 83B now provides that in the case of a public company incorporated after 15th January, 1937 not less than two-thirds of the whole number of directors must be persons whose period of office is liable to determination at any time by retirement in rotation. See also s. 87-I.

The new s. 86A provides that if any person being an undischarged insolvent acts as managing agent or manager, he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand rupees or to both.

A managing agent shall not be able to transfer his office unless the transfer is approved by the company in general meeting [see s. 87B (c)], but an assignment of his office by a manager shall be of no effect unless and until it is approved by a special resolution [see s. 86B]. It is rather difficult to appreciate the reason for this distinction and common sense suggests that the distinction, if one was necessary, should have been the other way about.

S. 86C enacts that save as provided in that section any provision in the articles or a contract or otherwise for exempting any director, manager or officer [which includes a managing agent—see s. 2 (1) (11)] or auditor from indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust in relation to the company.

Save in the case of a private company which is not the subsidiary company of a public company, no managing agent shall, after 15th January, 1937, be appointed to hold office for a term of more than 20 years at a time; and a managing agent who has been appointed previous to that date shall not hold office after the expiry of 20 years from the 15th January, 1937 unless then re-appointed or unless re-appointed before the expiry of the said 20 years. A managing agent whose office is terminated in accordance with the above provisions shall be entitled to a charge upon the assets of the company by way of indemnity, subject to existing charges and encumbrances, if any. The termination of the office shall not take effect until all moneys payable to the managing agent for loans made to or remuneration due up to the date of such termination are paid (see s. 87A).

If a managing agent, or a member of his firm or if the managing agent is a company, a director of or an officer holding from it a general power of attorney, is convicted of a non-bailable offence in relation to the affairs of the company of which he is a managing agent, he shall be liable to removal from his office by a resolution of the company notwithstanding any thing to the contrary in the articles or agreement [see s. 87B (a)]. The office of a managing agent shall be vacated if he is adjudged insolvent [s. 87B (b)]. A charge or assignment of his remuneration or any part thereof shall be void as against the company [s. 87B (d)]. Upon a winding up of the company the contract of management shall be determined without prejudice however to his right to recover any moneys recoverable from the company, provided that where the Court finds that the winding up is due to the negligence or default of the managing agent himself, he shall not get any compensation for the premature termination of his contract of management [s. 87B (e)]. Except in the case of the appointment of a company's first managing agent prior to the issue of the prospectus or statement in lieu of prospectus where the terms of the appointment are there set forth, the appointment of a managing agent, his removal, and variation of his contract of management made after 15th January, 1937 shall not be valid unless approved by a resolution of the company [see s. 87B (f)].

Where a company appoints a managing agent after 15th January, 1937, his remuneration shall be a sum based on a fixed percentage of the net annual profits of the company, with a provision for a minimum payment in the case of absence or inadequacy of profits, together with an office allowance to be defined in the agreement of management. Any other form of or additional remuneration shall not be binding on the company unless sanctioned by a special resolution [see s. 87C]. This provision does not apply to a private company except one which is the subsidiary company of a public company or to an insurance company [s. 87C (4)]. For the meaning of the expression "net profits" see sub-s. (3) of s. 87C.

Except in the case of a private company which is not the subsidiary company of a public company, no company must make to its managing agent or to his partner or to a member or director of his private company where the managing agent is a firm or a private company, any loan out of the company's moneys or guarantee any loan made to the managing agent. But this will not prevent the managing agent from holding any credit in a current account maintained subject to the limits approved by the board of directors for the purpose of the company's business [see s. 87D (1) & (2)]. As to the penalty for contravention of this provision see s. 87D (3).

Sub-s. (5) of s. 87D provides that after 15th January, 1937, except with the consent of three-fourths of the directors present and entitled to vote on the resolution, a managing agent or the firm of which he is a partner, or any partner of such firm, or, if the managing agent is a private company, a member or director thereof shall not enter into any contract for the sale, purchase or supply of goods and materials with the company.

No company incorporated after 15th January, 1937 shall make any loan or guarantee any loan made to any company under the management of the *same managing agent*; and no company shall, after the expiry of 6 months from the 15th January, 1937, except by way of renewal of an existing loan or guarantee given, make any loan to or guarantee any loan made to any such company. But these restrictions will not apply to loans made to or guarantees given by a company to or on behalf of a company under its *own* management or its subsidiary companies [see s. 87E (1)]. As to the penalty for contravention of these provisions see sub-s. (2) of s. 87E.

S. 87F provides that a company, other than an investment company (that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities), shall not purchase shares or debentures of any company under the management of the same managing agent, unless the purchase has been previously approved by a *unanimous* decision of the board of directors of the purchasing company.

S. 87G prohibits a managing agent from issuing debentures, and except with the authority of the directors and within the limits fixed by them it prohibits the managing agent from investing the funds of the company. Any delegation of any such power by a company to its managing agent shall be void (see s. 87G).

By s. 87H a managing agent is debarred from engaging *on his own account* in any business which is of the same nature as and directly competes with the business carried on by a company under his management or by a subsidiary company of such company.

Except in the case of a private company the managing agent shall not, after the 15th January, 1937, be able to appoint more than one-third of the whole number of directors notwithstanding any such power given to the managing agent in the articles of the company (s. 87-I).

The amended s. 91C provides that where a company enters into a contract for the appointment of a manager or managing agent in which contract any director is directly or indirectly concerned or interested or varies any such existing contract, the company must within 21 days send to every member an abstract of the terms of such contract or variation together with a memorandum indicating the nature of the director's interest therein, and that the contract shall be open to inspection by the members. As to the consequences of default see sub-s. (2) of s. 91C.

As the managing agent is an *agent* of the company, he should comply with the provisions of s. 91D if the company is not a private company (other than the subsidiary company of a public company).

For the statements to be made in the prospectus relating to the managing agent see the amended s. 93, and for such statements to be made in the statement in lieu of prospectus see Forms I and II in the Second Schedule at pp. 762-770.

As to the obligation of the managing agents and managers to keep books of account and the consequences of default see the new s. 130.

As the word "officer" includes managing agents [see s. 2 (1) (11)], if he is convicted as the result of a prosecution initiated under s. 141A for an offence in relation to the company, he will not be able, it is apprehended, without the leave of the Court, to be the managing agent of or directly or indirectly be concerned in or take part in the management of any company for 5 years from the date of his conviction [see s. 141A (4)]. As to the application for leave to the Court under this section see Rule 39 at p. 863.

As to the obligation of a managing agent to submit to the official liquidator, provisional or otherwise, a statement as to the affairs of the company and the consequences of default, see s. 177A.

Following the provisions of s. 277 of the English Act of 1929 a machinery has been provided in the new s. 237 for the prosecution of any present or past managing agent, among others, who has been guilty of any offence in relation to the company for which he is criminally liable.

Following s. 271 of the above English Act of 1929 a considerable number of new and serious offences have been created by s. 238A for past or present managing agents, directors, managers and other officers in relation to a company which is being wound up in any of the three modes or is subsequently wound up. These offences are punishable with imprisonment for 2 years or 5 years (see s. 238A).

As to the punishment for wrongfully possessing, wrongfully withholding possession of and misapplying property of a company by its managing agent, director, manager or other officer or employee see s. 282A, and as to the punishment for making default in depositing the securities of employees of the company in a scheduled bank or making default in investing the provident fund moneys of such employees as directed in sub-s. (2) of s. 282B, see sub-s. (5) of that section.

For a list of offences under the Act see App. H, (pp. 1080-1086), for a list of documents &c. to be filed with the registrar see App. I pp. 1087-1088 and for a list of books &c. to be kept under the Act see App. J. (p. 1089).

It should be remembered in this connection that the word "officer" includes a managing agent [see s. 2 (1)(11)] and the word "director" includes any person occupying the position of a director by whatever name called. So a managing agent may be liable as a director or manager and *vice versa* if he occupies such a position [see s. 2 (1)(5)(9) & (9A)].

After the expiry of 2 years from 15th January, 1937 no banking company can be managed by a managing agent other than another banking company (see s. 277H). For the consequences of contravention see sub-s. (4) of s. 277L.

Prospectus.

Great care and skill are required in drafting a prospectus by which share capital is raised for the company. It should be attractive but at the same time it should not contain misrepresentation of any material fact or any deceptive, misleading or ambiguous statement. The prospectus must comply with the provisions of ss. 92 and 93, and conditions as to waiver of compliance thereof and as to notice of any contract &c. not specifically referred to in the prospectus are void (s. 96). In drafting a prospectus the new provisions introduced in s. 93 (shown in italics) by the Companies (Amendment) Act, 1936 should be carefully studied and complied with. For the consequences of default in complying with any of the provisions of s. 93 see the amended s. 97.

The prospectus should contain a copy of the memorandum of association except where it is published as a newspaper advertisement. A form of application for shares should always be given [see s. 96 (2)]. A skeleton prospectus is given in Form 88 at pp. 1155-1157, App. K. As to the applications for shares see Forms 89 and 90 at pp. 1157-1158.

A copy of the prospectus is to be dated and signed by every person who is named therein as a director or proposed director or by his agent authorized in writing. This is to be filed with the registrar for registration *on or before the date of its publication.* If a prospectus is issued without such a copy being so filed, the persons who are parties to the prospectus shall be liable to a penalty (see s. 92). The date of the prospectus will be taken as the date of its publication unless the contrary is proved.

Where a prospectus invites persons to subscribe for shares in or debentures of the company, a director, promoter or any other person who has authorized the issue of the prospectus will be liable for any misleading or untrue statement therein to all persons for compensation or damages who subscribe for the shares or debentures on the faith of the prospectus (see s. 100 and notes at pp. 272-283). They can escape liability only if they can prove want of knowledge or honest mistake of fact or that the non-compliance or contravention was in respect of matters which were immaterial (see the amended s. 97).

As to what is a prospectus and what will be regarded as such see notes at pp. 40-41 and 251-252; and as to the meaning of the word "vendor" see ss. 95 and 96.

Where there is a misrepresentation or concealment of a material fact in a prospectus the following remedies are open to the allottee: (1) rescission of the contract to take shares; (2) defence taken in an action for call; (3) rectification of the register of members; (4) damages in an action of deceit; (5) damages under s. 100; and (6) criminal proceedings (see pp. 251-254).

It sometimes happens that a company allots its shares or debentures to somebody with a view that the whole or part of those shares or debentures may subsequently be offered for sale to the public. Following s. 38 of the English Act of 1929 it has been provided in the new s. 98A that any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company and as such must comply with all the provisions relating to a prospectus issued by the company. It will be presumed that an allotment or agreement to allot shares and debentures was made with a view to those being offered for sale to the public, if it is shown (a) that an offer of the shares or debentures or any of them for sale to the public was made within 6 months after the allotment or agreement to allot or (b) that on the date when the offer was made the whole of the consideration to be received by the company in respect of them had not been so received.

S. 97 will apply to the person or persons making the offer as though they were persons named in a prospectus as directors of a company and the provisions of s. 93 will have effect as if it required a prospectus to state the additional particulars mentioned in cluses (a) and (b) of sub-s. (3) of s. 98A. See also sub-s. (4) of that section.

Statement in Lieu of Prospectus.

A company which does not issue a prospectus must not allot any of its shares or debentures before it has filed with the registrar a statement in lieu of prospectus giving most of the particulars required to be given in a prospectus, in the form given in Forms I and II in the Second Schedule of the Act (see pp. 762-770). The statement is to be signed, as in the case of a prospectus, by every person who is named therein as a director or a proposed director or by his agent authorized in writing (s. 98).

The terms of any contract referred to in the prospectus or statement in lieu of prospectus cannot be varied except with the approval of the company in general meeting (s. 99).

Prospectus offering Debentures for Subscription.

The word "prospectus" means any prospectus, notice, circular, advertisement or other invitation offering to the public for subscription any shares or debentures of a company [s. 2 (1) (10)]. So when a prospectus is sought to be issued offering debentures for subscription, the prospectus thereof should comply with the requirements of ss. 92, 93 and 98.

For forms of such a prospectus, application, allotment and transfer of debentures and the debenture itself see Forms 139, 140, 141, 142 and 143 respectively printed at pp. 1184-1189.

Underwriting.

For avoiding or minimising the risk of failure of an issue of shares or debentures of a company it is usual to make arrangement for underwriting them before issuing the prospectus. No allotment of shares can be made unless the minimum amount, fixed in the memorandum or articles and mentioned in the prospectus, has been subscribed and the application money (not less than 5 p. c. of the amount of the share) received by the company in cash within 180 days (roughly 6 months) after the first issue of the prospectus. In such a case all moneys received from applicants for shares shall have to be returned (s. 101). In the case of the first allotment of share capital of a company which does not issue any invitation to the public to subscribe for its shares, the company cannot go to allotment unless the minimum amout mentioned above and named in the statement in lieu of prospectus has been subscribed and the application money (not less than 5 per cent. of the amount of the shares) paid in cash [see s. 101 (7)]. For this reason also it is advisable to secure underwriters for the whole or at least a substantial portion of the issue.

The underwriter writes a letter to the promoters or directors of the company agreeing to underwrite a specified amount of the issue on the footing that he is only bound to take up his rateable proportion of what the public does not subscribe (see Forms 85 and 86 at pp. 1153-1154). An underwriter usually procures sub-underwriters on similar conditions (for sub-underwriting letter see Form 87 at pp. 1154-1155). An underwriting letter, when accepted, ripens into a contract. As to what "underwriting" is and the obligations of an underwriter see pp. 304-306.

Payment of commission and brokerage.

The responsibilities of an underwriter are undertaken in consideration of a commission the payment of which must have been authorized by the articles and disclosed in the prospectus (s. 105). Reproducing s. 47 of the English Act of 1929 the Companies (Amendment) Act, 1936 has made provision in the new s. 105A for issuing at a discount shares of a class already issued provided that (a) such issue is authorized by a resolution of the company and is sanctioned by the Court (as regards contents of the order see Rule 38 printed at p. 863); (b) the resolution specifies the maximum rate of discount not exceeding 10 p.c.; (c) not less than 1 year must at the date of issue have elapsed since the date on which the company was entitled to commence business; and (d) such shares are issued within 6 months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow. Every prospectus relating to the issue of such shares and every balance-sheet issued after the issue of the shares must contain the particulars of the discount or so much thereof as has not been written off. For the consequences of default of this latter provision see sub-s. (3) of s. 105A.

Save as aforesaid, the payment of a commission or discount on a share is illegal (see notes at pp. 303-304). The total amount of commissions in respect of shares and that of commissions or discounts in respect of debentures, or so much thereof as have not been written off, must be stated in every balance-sheet until the whole amounts have been written off (s. 106).

If a commission for subscription of its shares is paid by a company not issuing a prospectus, it must be disclosed in the statement in lieu of prospectus or in a statement in the prescribed form (see Form XVII, p. 830) and filed with the registrar, and where a circular or notice, not being a prospectus, is issued, the commission must also be disclosed therein [s. 105 (1) (b)].

Issue of redeemable preference shares.

Reproducing s. 46 of the English Act of 1929, the Companies (Amendment) Act, 1936 has made provisions for issuing redeemable preference shares, if so authorized by the articles, in the case of companies limited by shares. Subject to the provisions of clauses (a) to (d) of sub-s. (1) of s. 105B these shares may be redeemed by the company. In every balance-sheet issued by the company particulars mentioned in sub-s. (2) must be stated and for consequences of default see that sub-section. As regards other provisions relating to the same see sub-ss. (4) and (5) of s. 105B.

Payment of Interest out of Capital.

Payment of interest or dividend out of capital is illegal. But where any shares are issued to defray the expenses of the construction of any works or building or the provision of any plant which cannot be made profitable for a long period, the company may pay interest not exceeding 4 per cent. per annum on so much of that share capital as is for the time being paid up, subject to the conditions and restrictions mentioned in s. 107.

Application for and Allotment of Shares.

It is not lawful to issue any form of application for shares or debentures unless the form is issued with a prospectus which complies with the requirements of s. 93 [see the new sub-s. (2) of s. 96].

Applications for shares with deposits (which should be not less than 5 per cent. of the amount of the share) may be received direct by the company or through a bank or banks with which previous arrangements have been made. For forms of such applications, see Forms 89 and 90 at pp. 1157-1158. Where a bank receives the applications, it daily sends them with a list to the company entering the amounts received on the company's pass-book which is from time to time checked with the applications. When it is seen that the amount of the minimum subscription as stated in the articles and the prospectus or the statement in lieu of prospectus has been received, the company proceeds to allotment.

Minimum subscription.

Following s. 39 and paragraph 5 in part I of the Fourth Schedule of the English Act of 1929 the Companies (Amendment) Act, 1936 has made new provisions regarding the minimum subscription by amending s. 101. In sub-s. (1) it has been laid down that no allotment shall be made of any share capital offered for public subscription unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised in order to provide the sums required to be provided in respect of the following matters, namely : (a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue ; (b) any preliminary expenses including commissions for placing the shares ; (c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters ; *and* (d) the working capital. The amount so stated in the prospectus as the minimum subscription will be reckoned exclusively of any amount payable otherwise than in cash and at least 5 per cent. thereof must be received in cash by the company before going to allotment [see sub-ss. (1), (2) and (2A) of s. 101].

If the aforesaid conditions are not fulfilled within 180 days after the first issue of the prospectus, all moneys received from the applicants of shares must be repaid within 190 days after the issue of the prospectus, otherwise the directors will be jointly and severally liable to repay that money with interest at 7 per cent. per annum [see sub-s. (4) of s. 101]. Until such repayment or until the certificate for commencement of business is obtained, the money should be kept deposited in one of the scheduled banks a list of which is given at pp. 286-287 [see sub-s. (2B) of s. 101]. For the consequences of contravention of the last provision see sub-s. (2C) of s. 101.

An allotment made in contravention of s. 101 will be voidable at the instance of the applicant within 1 month after the statutory meeting, or where the company is not required to hold a statutory meeting as in the case of a private company, or where the allotment is made after the holding of the staturory meeting, within 1 month after the date of the allotment *and not later*, and will be voidable notwithstanding the company is in course of being wound up [see the amended sub-s. (1) of s. 102]. For the notice avoiding the allotment see Form 98 at p. 1164.

By the articles shares are generally placed at the disposal of the directors, the managing director or the managing agents. Where the power of allotment is vested in the directors, the secretary places the applications before the board meetings from time to time and resolutions for allotment are passed. Thereupon the secretary issues allotment letters (see Form 92 at p. 1160) entering the necessary particulars in the Application and Allotment Book (see Form 104 at p. 1167). The application on which allotment cannot be made owing to over-subscription of the issue or any other cause should be returned to the applicant with a letter of regret and a payment order for return of the deposit money (see Form 91 at p. 1159). For the forms of letter of allotment of preference shares and fully paid shares see Forms 93 and 94 at p. 1161.

Return of allotment.

After allotment the company should within one month file with the registrar a return of allotment in Form XV, pp. 827-828 (see s. 104). In the case of shares allotted as fully or partly paid up otherwise than in cash, duly stamped contracts showing the consideration must be produced for the inspection and examination of the registrar. At the same time copies thereof verified in the prescribed manner (see p. 812) should be filed with the registrar [see s. 104 and notes]. Where such a contract has not been reduced to writing, the company must within 1 month after the allotment file with the registrar the prescribed particulars (see Form XVI at pp. 829-830) of the contract duly stamped [see s. 104 (2) and App. L, p. 1192].

The return of allotment is generally filed once a month taking care that all allotments made within the month are included therein.

Commencement of Business.

A public company cannot commence business unless and until it gets the requisite certificate from the registrar of companies (s. 103). To obtain this the company shall have to file a duly verified declaration that (1) shares held subject to the payment of the whole amount in cash have been allotted to an amount not less than the minimum subscription as explained above ; (2) the directors have paid the application and allotment moneys on the shares taken or contracted to be taken by them ; and (3) where the company does not issue a prospectus a statement in lieu of prospectus has been filed with the registrar (see s. 103). As to the forms of the declaration and verification in the cases where a prospectus is issued and where a statement in lieu of prospectus is issued see forms XIII and XIV respectively at pp. 825-827.

All contracts made by the company before the date on which it is entitled to commence business are provisional only and not binding on the company until such date [see s. 103 (3) and notes at p. 297]. For consequences of commencing business or exercising borrowing powers in contravention of s. 103 see sub-s. (5) thereof.

S. 103 however does not apply to a private company or to a company registered before the commencement of Act VII of 1913 which does not issue a prospectus or to a company limited by guarantee and not having a share capital [s. 103 (6)].

Register of Members.

As soon as a company is registered the secretary should commence writing up the register of members beginning with the names of the subscribers to the memorandum and where the allotments are made he should enter therein the names of the allottees and other necessary particulars. For these particulars and penalty for default see s. 31. As to the method of keeping the register see notes at pp. 130-131. In large companies another book called the "share ledger" is used in which an account is kept of the shares of the particular members. Ordinarily one book will suffice and Form 105 (at p. 1168) for the purpose is recommended.

Reproducing s. 96 of the English Act of 1929, it has been provided by the new s. 31A that every company having more than 50 members must keep an index of the names of members and must within 14 days after any alteration is made in the register of members make the necessary alteration in the index. The index may be in the form of a card index and must contain a sufficient indication to enable the account of any member to be readily found. For the consequence of default in keeping the index see sub-s. (3) of s. 31A.

It should be remembered that no notice of any trust, expressed, implied or constructive shall be entered on the register of members, nor will the registrar of companies receive any such notice (see s. 33 and notes at pp. 136-137).

For the provisions relating to the keeping of a branch register in the United Kingdom called the British register see ss. 41 and 42. For Form of notice under s. 41 of the situation of the office where a British register is kept or any change in, or discontinuance of, any such office, see Form II, at p. 815.

The register of members is *prima facie* evidence of matters directed or authorized by the Act to be entered therein (see s. 40 and notes at pp. 147-148).

Rectification of the register of members.

Where a person has been induced to take shares by fraud or misrepresentation and where a person has ceased to be a member by transfer or otherwise and his name is kept on the register of members inspite of representation on his part, he may apply to the Court for rectification of the register. Similarly where a person has got a right to be on the register by taking transfer of shares or otherwise and the company refuses or makes unnecessary delay to place his name on the register of members, he can make such an application (see s. 38 and notes at pp. 143-149). As to the directors' power to rectify the register without intervention of the Court see notes at pp. 145-146.

When the Court makes an order for rectification of the register of members, it directs notice of the rectification to be filed with the registrar within a fortnight from the date of the completion of the order (see the amended s. 39).

All applications for leave to rectify the share register must be made on notice to the company, and in case of transfer of shares, to the transferor or the transferee as the case may be (see Rule 15 at p. 861).

Inspection &c. of the register of members.

The register of members commencing from the date of the registration of the company and the index of members should be kept at its registered office. It may be inspected by the members *gratis* and by any other person on payment of one rupee or such less sum as may be prescribed by thę articles for each inspection during the business hours ; any member or other person may also make extracts thereform [see the amended s. 36 (1)] ; and the company must cause any copy so required by any person to be sent to that person within 10 days from the date of the requisition [see the amended sub-s. (2) of s. 36]. As to the penalty for default see the new sub-s (3) of s. 36 where it has been provided that in case of default the Court may by order compel an immediate inspection of the register and index or direct that copies required shall be sent to th persons requiring them.

A company may on giving 7 days' previous notice by advertisement close the register of members for any time or times not exceeding in the whole 45 days in each year, but not exceeding 30 days at a time (see the amended s. 37). But no provision has been made for closing the index of members. The register of members is usually closed just before an ordinary general meeting.

Share Certificates and Stock Certificates.

From the application and allotment book and the register of members the secretary should take materials for writing up the share certificates (see From 96 at p. 1162). These should be signed and sealed in accordance with the provisions therefor in the articles of association and kept ready for delivery within three months after the allotment (s. 108). As soon as the share certificates are ready a notice to that effect (see Form 95 at p. 1161 should be sent to the shareholders whose certificates are thus ready. For penalty for default see s. 108 (2).

A statement as to the company's lien on the shares should not be entered on the share certificate (see p. 311). For other matters relating to the share certificate see notes on pp. 118 to 121 and p. 312. As to the "lien" clause in the articles see reg. 9, Table A and for waiver, priority and effect of assignment or death see pp. 668-670.

If a share certificate is defaced, lost or destroyed, it may be renewed by the company in accordance with the provisions thereof in the articles (see reg. 7 of Table A) upon furnishing the requisite evidence and indemnity bond (see Form 100, p. 1164). Before issuing a fresh certificate advertisement in a newspaper should be made in Form 99 (see p. 1164).

Where shares are converted into stock, share certificates should be called in and stock certificates issued in lieu thereof. For form of stock certificate see Form 97 at p. 1163.

Calls.

Calls are to be made by the authority named in the articles of association (see regs. 12 to 17 of Table A). Generally directors are empowered to make the calls. But sometimes the managing director or the managing agents are so empowered. In any case the proceeding by which the calls are made should be in writing and should be kept in a proceedings book if they are not made by the directors in which case the calls are made by resolutions passed at the board meeting. The amount and interval should tally with those mentioned in the prospectus. For notice of call to be sent to the shareholders see Form 101 at p. 1165). A register of calls should be kept in a form similar to Form

102 (see p. 1165). Provisions are generally made in the articles for interest at certain rates payable to the company for failure to pay call on the due date. For other informations in connection with this matter see notes at pp. 670-677.

Difference between Shareholders.

A company may, if so authorized by its articles, make arrangements for a difference between shareholders in the amounts and times of payment of calls, accept from a shareholder the whole or part of the share money yet unpaid, though the same has not been called up, and pay dividend in proportion to the amounts paid up on the shares (see s. 49 and notes).

Forfeiture.

Provisions are generally made in the articles for forfeiture of shares for non-payment of call money (see regs. 24 to 30 of Table A). Where the articles provide that a person whose shares have been forfeited shall, notwithstanding the forfeiture, remain liable to pay the call money with interest (see reg. 28 of Table A), such a provision is enforceable.

The regulations contained in the articles for forfeiture should be strictly followed, otherwise the Court may declare the forfeiture invalid. As to the notice of forfeiture see Form 103 at p. 1166. S. 104 does not apply to the issue and allotment of forfeited shares [see the new sub-s. (4) of s. 104].

For other matters relating to forfeiture of shares see pp. 685-692.

Alteration of Share Capital.

A company limited by shares may, *if so authorized by its articles*, (a) increase its share capital by the issue of new shares; (b) consolidate and divide all or any of its shares into those of larger amounts; (c) convert all or any of its *paid up* shares into stock and re-convert that stock into paid up shares of any denomination; (d) sub-divide its shares or any of them into shares of smaller amounts; and (e) cancel shares which have not been taken or agreed to be taken (s. 50). Such a cancellation of shares is not a reduction within the meaning of the Act [s. 50 (3)]. These powers must be exercised by the company in general meeting [see the amended sub-s. (2) of s. 50], and the company must file with the registrar notice of the exercise of any powers of sub-division or cancellation of shares [see the new sub-s. (4) of s. 50]. For form of such notice see Form III (pp. 815-816).

If the articles do not contain the requisite powers they may be taken by passing "special resolution" (see ss. 20 and 81 and notes to those sections).

(a) *Increase of Share Capital.*

In increasing the share capital the provisions in the articles, or if there is no such provision, those in the special resolution authorizing the increase, should be followed. Where they do not require an "extraordinary" or a "special resolution", an ordinary resolution will do. Formerly the company might empower the directors to make the increase but now a resolution of the general meeting is necessary [see the amended sub-s. (2) of s. 50].

Where the directors decide to increase the capital by the issue of further shares, they must offer them in the first instance to the members in proportion to the existing shares held by each member (irrespective of class), and such offer is to be made by notice specifying the number of shares to which the member is entitled and limiting a time within which the offer, if not accepted, will be deemed to be declined (see the new s. 105 C).

Where a company having a share capital consisting of shares or stock has increased the same beyond the registered capital, it must file with the registrar within fifteen days of the date of the resolution a notice of the increase (see s. 53, Form IV pp. 816-817 and Form 112 at p. 1171). Similarly where a company having no share capital has increased the number of its members, a notice of such increase should be sent to the registrar within fifteen days of the date of the resolution (see Form V at p. 817 and Form 113 at p. 1172). The notice must include particulars of the classes of shares affected and the conditions (if any) subject to which the new shares are to be issued [see the new sub-s. (2) of s. 53]. As to the penalty for omission to file the notice see sub-s. (3) of s. 53.

Subject to any restriction in the memorandum a company may create and issue new shares with such preferential or other special rights as may be deemed expedient and if the articles do not contain the power it may be taken by passing a special resolution.

(b) *Consolidation of shares.*

The observations made above in the case of increase of share capital apply generally as to the mode in which the shares may be consolidated and divided into shares of larger amount. For notice to the registrar see s. 51 and Form III at pp. 815-816 and Forms 110 & 111 at p. 1171.

(c) *Conversion of shares into stock and re-conversion.*

It should be noted that only paid up shares can be converted into stock. If anything remains unpaid on the shares, such shares cannot be converted into stock. For distinction between "share" and "stock" and the convenience of stock see notes at pp. 118 and 157.

A company cannot issue stock directly. For the form of stock certificate see Form 97 at p. 1163 and that of notice to the registrar on conversion of shares into stock see Form 111 at p. 1171.

The mode of converting shares into stock or re-conversion is the same as in the case of an increase of share capital.

Where the share capital has been converted into stock the provisions of the Act which are applicable to shares only will cease to apply in respect of the shares thus converted; and the register of members, and the list of members to be filed with the registrar, must show the amount of stock held by a member without any distinctive number (see s. 52).

(d) *Sub-division of shares.*

A company may sub-divide its shares or any of them into shares of smaller amount provided that in the sub-division the proportion between the amount paid and the amount unpaid on each reduced share be the same as it was in the case of the share from which the reduced share is derived [s. 50 (1) (d)].

In the case of sub-division of shares the provision for notice to the registrar is similar to that in the case of increase of capital [see the new sub-s. (4) of s. 50].

(e) *Cancellation of shares.*

A cancellation of shares made under s. 50 (1) (e) is not a reduction of capital [s. 50 (3)]. In this way that portion of the authorized capital which has not been taken or agreed to be taken may be diminished. But where the subscribed capital (whether the shares are paid up in part or whole) is sought to be reduced, strong safeguards have been provided in the Act (see ss. 55 to 65).

Re-organization of Share Capital.

A limited company, if necessary, can, by passing "special resolution" confirmed by the Court, reorganize its share capital (1) by consolidating shares of different classes, or (2) by dividing its shares into different classes. But if the effect of such re-organization is to affect the preference or special privileges of a particular class of shareholders, then the company must get a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class. See s. 54 and notes at pp. 159 to 162. For an illustration of re-organization see p. 160, 2nd paragraph.

A re-organization of share capital which can be done without altering the memorandum of association does not require the sanction of the Court.

Variation of shareholders' rights.

The English Act of 1929 repealed s. 45 of the Act of 1908 (corresponding to s. 54 of the present Indian Act) and enacted s. 61 regarding variation of the rights of different classes of shareholders. The Companies (Amendment) Act, 1936 has reproduced this section in the new s. 66A, retaining at the same time s. 54. So it is not improbable that in some cases the two sections may come into conflict.

It has been provided by this new section that if provision is made by the memorandum or articles for authorising the variation of rights. attached to any of the classes of shares subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any class of shares are varied, then the holders of not less in the aggregate than 10 per cent. of the issued shares of that class, being persons who did not consent to vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court. As regards the procedure for the making and hearing of such application see sub-ss. (2) and (3) of s. 66A.

The company must, within 15 days after service on it the order of the Court, forward a copy of the order to the registrar. For the consequence of default see sub-s. (5) of s. 66A.

Reduction of Share Capital.

The new s. 54A provides that no limited company shall have power to buy its own shares or the shares of a public company of which it is a subsidiary company. But it can effect a reduction of capital by complying with the provisions of sections 55 to 65. If the power to reduce is contained in the articles, it can at once proceed to pass the necessary special resolution for reduction ; but if not, the company must first take the necessary power by altering the articles under s. 20, that is, by passing "special resolution" (see s. 81 and notes at pp. 199-203).

Sub-s. (2) of s. 54A provides that no company shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company. For the consequences of contravention of these provisions see sub-s. (3) of s. 54A. These restrictions will not however apply to a private company not being a subsidiary company of a public company nor to the lending of money by a company in the ordinary course of its business where the lending of money is its ordinary business [see sub-s. (2) of s. 54A].

The company can by complying with ss. 55 to 65 extinguish or reduce the liability on any of its shares not paid up. As for instance, where Rs. 5 only has been paid on each of the shares of Rs. 10, the company can extinguish the further liability of Rs. 5 per share by reducing the Rs. 10 shares to Rs. 5 shares.

Where capital has been lost or is unrepresented by available assets, the company can cancel a portion of its paid up share capital. As for instance, where the company's share capital is one lac of rupees divided into 1000 shares of Rs. 100 each all paid up and has lost Rs. 25,000 in its business which is not represented by any available assets, it can write off that amount from its share capital and make each share one of Rs. 75 fully paid up.

Where the paid up share capital is in excess of the requirements of the company, it can return the excess amount to the shareholders. As for example, where the capital is Rs. 1,00,000 divided into 1000 shares of Rs. 100 each all paid up, if the company does not require more than Rs. 50,000 for its purposes, it may return Rs. 50 per share to the shareholders and make the shares of Rs. 50 each fully paid up. In such a case the capital may be returned also on the footing that it may be called up again when the company may think it necessary.

In all these cases the return should be an all round one, that is, the reduction should be made in respect of each share in the same proportion. But in a proper case the Court can confirm any kind of reduction notwithstanding that it affects the rights of a particular class of shareholders. See notes to s. 55 at pp. 164-169.

As to the procedure see ss. 56 to 65 and the new Calcutta High Court Rules in App. F at pp. 861-863.

On and from the passing of the resolution for reduction, or where the reduction does not involve diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, on and from the making of the order confirming the reduction, the company must add to its name the words "and reduced" until such date as the Court directs (s. 57). As to the registration of the Court's order and minute of reduction see s. 61. These should be embodied in every copy of the memorandum issued after its registration and in default the company will be liable to a penalty (s. 62).

A company limited by guarantee may, if it has a share capital and is so authorized by its articles, increase or reduce its share capital in the same manner (s. 66).

Reserve Liability.

A limited company may by "special resolution" determine that the uncalled portion of its capital shall not be called up except in the event and for the purposes of winding up (s. 69).

Transfer of Shares.

A share is a movable property transferable in manner provided by the articles of association (s. 28). Shares are transferable subject only to the restrictions that may be imposed by the articles. For discussion as to the right of transfer and the directors' power to refuse registration thereof see pp. 108-110 and 680-682. As to how transfers are effected, effects of non-compliance with the rules, effects of registration, forged transfers, certification and estoppel, transfer in blank, priority of title, purchase at Court sale &c. see pp. 111-118 and 677-683.

Unless a particular form is prescribed in the articles the transfer may be effected by any usual or common form (see reg. 18 of Table A). But it is *required* that the instrument of transfer is to be executed both by the transferor and the transferee [see sub-s. (3) of the new s. 34]. For forms of transfer see p. 680 and Form 114 at p. 1172 . The instrument of transfer together with the certificate of shares transferred is sent to the company, upon which the secretary gives a receipt (see Form 115 at p. 1173). If all the shares mentioned in the share certificate are transferred, an endorsement is generally made on the back of the share certificate to the effect that the shares are transferred to the transferee and the share certificate is returned to the latter. But where some of the shares only are transferred a "balance receipt" (see Form 116 at p. 1174) is given and two new share certificates are prepared—one is given to the transferor for the shares retained by him and the other to the transferee for the shares transferred to him.

When an instrument of transfer together with the share certificate is received in the company's office, the secretary should send a notice (see Form 117 at p. 1175) to the transferor to his registered address. But even this does not protect the company if the transfer is found to be forged (see p. 114). So it is the duty of the secretary to compare the signature of the transferor with his admitted signature kept in the office. For this purpose specimen signatures of all members should be called for and kept in a separate book in alphabetical order.

If the secretary does not hear from the transferor within a reasonable time or a communication admitting the transfer is received, the former places the transfer before the directors or other authority prescribed in the articles for orders for registration of the transfer, and this should be recorded in the register of transfers of shares (see Form 118 at p. 1175). The consequent changes in the register of members are also to be made, and a new folio should be opened in the name of the transferee.

After all this has been done, the transferee's name should be endorsed on the back of the share certificate or, if necessary, a new share certificate or certificates should be prepared taking care that the original certificate is cancelled and destroyed. For, if any one can get hold of the original certificate and he transfers the shares to a *bona fide* purchaser for value the company may be liable.

It is the transferee who usually makes the application for registration of the transfer; but the transferor has the same right to apply for registration (see s. 34 and notes at p. 138).

If the company improperly refuses to register the transfer, the remedy of the transferor and the transferee is to apply to the Court for rectification of the register (see s. 38 and notes at pp. 143-149).

New provisions relating to transfer of shares.

The new s. 34 provides that an application for registration of the transfer of shares may be made either by the transferor or the transferee, but if the application is made by the transferor of partly paid shares no registration shall be effected unless the company gives notice of the application to the transferee. The company may of course refuse to register the transfer if empowered to do so by its articles. Unless the directors decide to exercise this power of refusal, they must, if no objection is made by the transferee within 2 weeks of the receipt of the aforesaid notice, enter the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.

For the manner in which the notice is to be served see sub-s. (2) of s. 34; and as to the execution of the instrument of transfer see sub-s. (3).

If the company refuses to register the transfer of any shares or *debentures* it must, within 2 months from the date on which the instrument of transfer was lodged, send to the transferee as well as the transferor notice of the refusal [see sub-s. (4) of s. 34]. For the consequences of default see sub-s (5).

Right of executors and administrators to transfer.

The legal representatives of a deceased member is entitled to transfer the shares standing in the name of the latter without being himself registered as a member (see s. 35 and notes at pp. 139-140).

Stamp.

For stamp on an instrument of transfer see App. L, p. 1198.

Transmission of Shares.

In regulation 21 of Table A it is provided that the executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company ; and in the case of share registered in the names of two or more holders, the survivors or survivor or the executors or administrators of the deceased survivor, shall be the only persons recognised.

This form of articles is hardly suitable to this country for the following reasons : *first*, in the case of small holdings, which is usual in a poor country like India, it is a great hardship to go to the expenses of letters of administration ; secondly letters of administration are not granted in the case of a member of a joint Mitakshara family ; thirdly where any property is held by two or more persons, other than the members of a Mitakshara jointly family, either originally or by succession as heirs, it generally descends, in case of death, to the heirs of the deceased and not to the survivor. So a different rule in the case of shares in companies causes hardship. These were pointed out by Judges (see p. 683 and also in representations to the Government. Still the authorities responsible for the new amending Act did not think the matter worthy of consideration. The words "or holders of a succession certificate" after the word "administrators" whold have mitigated the hairship to some extent.

In the case of a member's death, the articles usually provide as to who will be recognized by the company as having title to the shares (see regs. 21 to 23 of Table A and notes at pp. 683-685). Where it is provided that the executors or administrators of a member shall be the only persons recognized by the company, they may either get themselves registered as members on production to the company of the probate or letters of administration (for form of application in such a case see Form 119 at p. 1176), or they may transfer the shares to somebody else under the provisions of s. 35. As to the rights of the legal representatives see notes at pp. 139-140.

The company should keep a book for noting the contents of the probate, letters of administration and decrees of the Court directing the rectification of register of members under s. 38 or declaring the title of a particular person or persons to particular shares. Powers of attorneys sent to the company for noting their contents may also be noted in this book.

As to the rights of an insolvent member's trustee see regs. 22 and 23 of Table A and notes at p. 685.

Shares or stock registered in the name of a lunatic can be transferred only under order made in lunacy by the person named in the order (see notes at p. 139).

Share-warrants to Bearer.

A company limited by shares, if so authorized by the articles, may issue share warrants to bearers with respect to fully paid up shares or stock and provide by coupons or otherwise for the payment of dividends (see Form 109 at p. 1170). The advantages of a share-warrant are that it entitles the bearer to the shares or stock therein specified and they are transferable by delivery (ss. 43 and 44). S. 43 does not apply to a private company [see the new sub-s. (2)].

On the issue of a share-warrant the company should strike out of the register of members the name of the member and enter instead the particulars mentioned in s. 47, otherwise the company will incur the penalty provided in cl. (2) of s. 47. Upon the surrender of the share-warrant for cancellation the date of the surrender should be entered in the register of members (s. 48), and the bearer thereof will, subject to the articles, be entitled to have his name entered as a member in the register of members (s. 45). If the company enters in the register the name of a bearer of share-warrant without the same being surrendered and cancelled, it will be responsible for any loss incurred by any person for thus entering the name of the bearer.

Borrowing.

In order to carry out the objects of a company it is sometimes necessary for it to borrow money. In the case of a trading or a banking company the power to borrow money is implied (see notes at pp. 61 and 321-323 ; but in other cases the power should be taken in the memorandum or in the articles of association. Where power is given by the articles of association to raise money on the security of the company's uncalled share capital, and there is nothing in the memorandum to the contrary, the uncalled share capital may be effectually charged [*Newton v. Debenture Holders of Anglo-Australian &c. Co.* (1895) A. C. 244 P. C.]. Where there is a power to borrow, the company can give security for the money as incidental to the power of borrowing, and create a mortgage or charge on any property or undertaking of the company.

Mortgage and charge.

Where a company creates a mortgage or charge (a) for securing any issue of debentures, (b) on its uncalled share capital, (c) on any immovable property or interest therein, (d) on any book debts, (e) a mortgage or charge not being a pledge on any movable property except stock-in-trade, or (f) a floating charge on the undertaking or property of the company, every such mortgage or charge, so far as the security is concerned, shall be void against the liquidator and any creditor of the company, unless the prescribed particulars (see Form XVIII, p. 831) of the mortgage or charge together with the instrument or a copy thereof verified in the prescribed manner (see p. 812) are filed with the registrar for registration within 21 days of the creation thereof (see s. 109). S. 109 should be read carefully and for the meaning of the expressions used therein, *e. g.*, "debenture", "charge," "fixed", "specific" and "floating" charges, "undertaking" &c. and for general commentary on the section see pp. 314-323.

Where any mortgage or charge on any property has been so registered, any person acquiring such property or any part thereof, or any share or interest therein, will be deemed to have notice of the said mortgage or charge as from the date of such registration [see the new sub-s. (2) of s. 109].

The aforesaid prescribed particulars should be filed with the registrar within 21 days as mentioned above. The registrar will enter the particulars in the register kept in Form XXI (see pp. 834-835). After making the entry the registrar will return the instrument or the verified copy, as the case may be. The register is open to inspection on payment of a fee not exceeding Re. 1 for each inspection (see s. 112). The registrar will also give a certificate of registration stating the amount secured and it will be conclusive evidence of compliance with ss. 109 to 112 (s. 114).

The new s. 109A provides that where after 15th January, 1937 a company registered in British India acquires any property which is subject to a charge of any kind as mentioned in s. 109, the company shall cause the prescribed particulars (see Form XX at p. 833) of the charge together with a copy [certified in the prescribed manner (see p. 812)] of the instrument, if any, by which the charge was created or evidenced, to be delivered to the registrar for registration within 21 days after the date on which the acquisition is completed, or in case the property is situate and the charge was created outside British India, within 21 days after the date on which the copy of the instrument could have been received in due course of post. For the consequence of default see sub-s. (2) of s. 109A.

Where a series of debentures is created by a company it must file with the registrar within 21 days after execution of the deed the particulars mentioned in s. 110. For form see Form XXII at p. 836. Where more than one issue is made of debentures in the series certain other particulars are to be filed with the registrar. See the proviso of s. 110 and Form XXIII at p. 837. As to the chronological index to register of mortgages and charges to be kept by the registrar see s. 113 and Form XXIV at p. 838.

The registration of the aforesaid particulars may also be effected on the application of any person interested therein, and in such case he will be entitled to recover from the company the fees properly paid by him for registration (s. 116).

Whenever the terms, conditions, extent or operation of any mortgage or charge so registered are modified, the company must send to the registrar the particulars of such modification for registration [see the new sub-s. (3) of s. 116 and Form XIX at p. 832], and such registration may also be effected on the application of any person interested therein (ibid).

A copy of every instrument creating a mortgage or charge requiring registration under s. 109 should be kept at the registered office of the company; but in the case of a series of uniform debentures a copy of one such debenture will be sufficient (s. 117).

Where there is an omission to register a mortgage or charge within 21 days as provided in s. 109 or there is omission or misstatement of any necessary particular or omission to give intimation to the registrar of the payment or satisfaction of a debt for which a charge or a mortgage was created, due to accident, inadvertence or some other sufficient cause, the Court may, on the application of the company or any interested person, extend the time for registration or order the omission or misstatement to be rectified (s. 120). Where the Court extends the time the order will not prejudice any rights acquired before the actual registration (s. 120).

The new s. 121 provides that a company must give intimation to the registrar of the payment or satisfaction of any mortgage or charge requiring registration under s. 109, within 21 days from the date of payment or satisfaction (see Form XXVIII at pp. 840-841). On receipt of this intimation the registrar will cause notice to be sent to the mortgagee calling upon him to show cause, within a time (not exceeding 14 days) to be fixed by such notice, why the payment or satisfaction should not be recorded ; and if no cause is shown, the rigistrar will order that a memorandum of satisfaction be entered on the register, and if required, will furnish the company with a copy thereof. If cause is shown, the registrar will record a note to that effect in the register, and will inform the company that he has done so.

As to the consequences for default in complying with any of the above provisions see the amended s. 122.

Every limited company should also keep a register of mortgages and floating charges [s. 123 (1)] and for this purpose Form XXI at pp. 834-835 may be used with necessary modifications. For penalty for omission to keep such a register and to enter therein the required particulars see s. 123 (2).

The copies of the instruments of mortgages and charges and the register of mortgages kept at the registered office of a company under ss. 117 and 123 respectively are open to inspection of any creditor or member of the company without fee, and the register of mortgages is open to inspection of any other person on payment of a fee not exceeding one rupee for each inspection as the company may prescribe (see s. 124). As to the penalty for default see sub-s. (2) of s. 124.

Debentures.

For the purpose of borrowing money or in payment for property purchased or for securing the repayment of money borrowed a company usually issues debentures or debenture-stock. For the meaning of these expressions see pp. 35, 36, and 314. As to the form of debenture see Form 143 at pp. 1187-1189.

Debentures may be for a fixed term of years, or repayable on notice or irredeemable (see s. 126 and notes at pp. 336-338). They can also be framed as payable to bearer (see notes at p. 35).

Debentures may or may not give security on the company's assets but generally mortgage debentures are issued creating a "fixed" charge on some or all the properties of the company or a "floating charge" on all the properties and assets of the company, present and future. As to the distinction between a "fixed" and a "floating charge" see notes at pp. 35-36 and pp. 314-316.

Debentures or debenture-stock are sometimes secured by a trust deed conveying the company's property to trustees for the debenture holders charging other property and containing provisions regulating the rights of the company and the debenture holders. The advantages of a trust deed are (1) that a legal estate is vested in the trustees ; (2) that they can look after the interests of all the debenture holders for whom it is sometimes difficult to take common action to protect their interest ; (3) the trustees can sell the property secured ; and (4) they can, if so empowered in the deed, appoint receivers to carry on the business.

Debentures are offered to the public for subscription by means of prospectus in the same way as shares. For form of a skeleton prospectus see Form 139 at pp. 1184-1185, for form of application see Form 140 at p. 1185 and for form of the letter of allotment see Form 141 at p. 1186.

Debentures to bearers may be transferred by delivery, but ordinarily transfer is made by an instrument in writing as in the case of shares (see Form 142 at p. 1187).

Where a series of debentures containing any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it will be sufficient for the purposes of s. 109, if there is filed with the registrar the particulars (see Form XXII, p. 836) mentioned in s. 110 within 21 days after the execution of the deed containing the charge, or, if there is no such deed, after the execution of any debentures of the series together with the deed or a copy thereof verified in the prescribed manner (see p. 812) or one of the series of debentures. Where more than one issue is made of debentures in the series, particulars of the date and amount of each issue are to be filed with the registrar (s. 110). See Form XXIII at p. 837.

Where any commission, allowance or discount is paid or made directly or indirectly in connection with the issue of any debentures, the particulars required to be filed for registration under ss. 109 and 110 should include particulars as to the amount or rate per cent. of such commissions &c. (s. 111). The company should also cause a copy of every certificate of registration given by the registrar under s. 114 to be endorsed on every debenture or certificate of debenture stock issued by the company and secured by the mortgage or charge so registered (s. 115).

A company should keep a register of debenture-holders (see Form 106 at p. 1168) which will, except when closed (not exceeding 30 days in a year), be open to the inspection of the registered holder of any such debentures and of every shareholder, and they may require a copy of the register or any part thereof on payment of 6 as. for every 100 words or fractional part thereof [s. 125 (1)]. Similarly every debenture holder may get a copy of any trust deed for securing any issue of debentures on payment of one rupee in the case of a printed trust deed, and in any other case on payment of 6 as. for every 100 words or fractional part thereof [s. 125 (2)]. For penalty for refusal of inspection or copy see s. 125 (3).

As to a company's power to re-issue redeemed debentures see s. 127.

A contract for taking debentures may be enforced by a decree for specific performance, while a contract for taking a mortgage cannot be so enforced.

Stamp.

As to the stamp duty on debentures and transfer of debentures see App. L pp. 1193 and 1198.

Interest.

When interest on a debenture is paid, income-tax is deducted by the company and a certificate under s. 18 (9) of the Income Tax Act, 1922 is granted to the debenture-holder. For form of such a certificate see Form 125 at p. 1179.

Receivers.

In a suit by a secured creditor the Court may appoint a receiver when it appears that the security is in danger or "jeopardy" (see p. 42).

A receiver may also be appointed by the debenture-holders under the powers contained in the debenture. In the latter case the power is fiduciary and must be exercised for the benefit of the debenture-holders generally. As to the appointment, position, powers and liability of a receiver see notes at p. 327-329.

When an order is obtained from the Court for the appointment of a receiver of the property of a company, or a receiver is appointed under the powers contained in an instrument, he must within 15 days from the date of the order or appointment file notice of the fact with the registrar (s. 118). For form of such notice see Form XXV at p. 839. For penalty for omission to file the aforesaid notice see s. 118 (2).

In the case of a receiver appointed under the powers contained in an instrument and where he has taken possession of the company's property, he must file half yearly accounts with the registrar so long as he remains in possession (see Form XXVI at pp. 839-840) and must also file, on ceasing to act as receiver, a notice to that effect (see Form XXVII at p. 840) with the registrar. The new sub-s. (2) of s. 119 provides that where a receiver has been appointed of a company's property, every invoice, order for goods, or business letter issued by or on behalf of the company or the receiver of the company, being a document on or in which the company's name appears, must contain a statement that a receiver has been appointed. As to the penalty for default in complying with any of the above provisions see sub-s. (3) of s. 119.

Where a receiver is appointed on behalf of the debenture-holders or possession is taken by or on behalf of those debenture-holders of any property of the company, then if the company is not at the time in course of being wound up, the debts mentioned in s. 230 must be paid forthwith out of the assets coming to the hands of the receiver or other person taking possession, in priority to any claim for principal or interest in respect of the debentures (see s. 129).

Statutory Meeting.

A company other than a private company must, within a period of not less than 1 month nor more than 6 months from the date at which it is entitled to commence business (see s. 103) hold a general meeting of the shareholders which is called the "statutory meeting" (see the new s. 77). For notice convening the meeting see Form 107 at p. 1169 and it should be remembered that the notice must state that it is to be the "statutory meeting."

At least 21 days before the meeting the directors should forward the "statutory report" to every member of the company and other persons entitled to receive it. The report should be in Form VII given at pp. 818-821 and it must be certified by not less than 2 directors or by the chairman of the directors if authorised by the directors. The shares allotted, the cash received in respect of such shares and the receipts and payments shown in the report must be signed by the auditors of the company. A copy of the statutory report certified by the directors as aforesaid is to be filed with the registrar forthwith after sending it to the members. For the consequences of default see sub-s. (10) of s. 77.

The members present at the statutory meeting are entitled to discuss any matter relating to the formation of the company or arising out of the statutory report; but if a resolution is desired to be passed, previous notice thereof must be given in accordance with the articles. The meeting may be adjourned from time to time and notice of a resolution may be given in accordance with the articles after the original meeting and before the adjourned meeting which has all the powers of the original meeting [s. 77 (8)]. For minutes of a statutory meeting see Form 108 at p. 1169.

If default is made in filing the statutory report or in holding the statutory meeting the company may be ordered to be wound up by the Court [s. 162 (ii)]. But if a petition is presented to the Court for winding up the company on this ground the Court may, instead of directing a winding up, give directions for the statutory report to be filed or the statutory meeting to be held or make such other order as may be just [s. 77 (9)].

Ordinary General Meeting.

A general meeting shall be held within 18 months from the date of incorporation of the company, and thereafter once at least in every calendar year and not more than 15 months after the holding of the last preceding general meeting (see the new s. 76). For the consequences of default see sub-s. (2) of s. 76. In case of default the Court may, on the application of any member, call or direct the calling of a general meeting [sub-s. (3) of s. 76]. See Rules 36 and 37 at p. 863.

At such an annual meeting a report of the directors regarding the working of the company is submitted, accounts and balance-sheets with profit and loss accounts with the auditor's report thereon are presented, dividends are declared and directors and auditors are elected. These are called "ordinary general meetings"; and all other general meetings whether called for special purposes by the directors or by the members under the provisions of s. 78 or otherwise are called "extraordinary general meetings."

Regulations are almost always made in the articles as to the proceedings at general meetings, notice of the meeting, its chairman, adjournment, votes of members, proxies, taking of polls, quorum and other necessary matters. But the provisions of clauses (a) to (e) of sub-s. (1) of the new s. 79 will have effect with respect to meetings of a company other than a private company not being a subsidiary company of a public company and the procedure thereat *notwithstanding* any provision made in the articles of the company in this behalf. So the above provisions have virtually been incorporated in the Act and have effects accordingly. The provisions of clauses (a) to (g) of sub-s. (2) of s. 79 will have effect in so far as the articles do not make other provisions in that behalf. The above provisions should be carefully read and in framing articles of association of a company care should be taken that the provisions of sub-s. (1) of s. 79 are incorporated therein.

In sub-s. (3) of s. 79 power has been given to the Court to order a meeting of the company to be called, held and conducted *in such manner as the Court thinks fit*, if for any reason it is impracticable to call a meeting of the company in any manner prescribed by the articles or the Act. So it appears that the Court is not bound in this respect to follow the provisions of the articles or even of the Act regarding the calling, holding or conducting a general meeting of the company. See Rules 36 and 37 at p. 863.

As to the notice calling an ordinary general meeting see Form 120 at p. 1176. The notice is generally printed together with the directors' report, balance-sheet and profit and loss account with the auditors' certificate thereon, and is to be sent to the members 14 days before the meeting.

Notice of an ordinary general meeting should be given to the auditors who are entitled to receive the same and to attend a general meeting at which any accounts examined and reported on by them are to be laid before the company and they may make any statement or explanation they desire with respect to the accounts [see the new sub-s. (4) of s. 145].

Balance-sheet and Reports of Directors and Auditors.

The directors of *every* company must at some date not later than 18 months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a balance-sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account since the incorporation of the company and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than *9 months* or in the case of a company carrying on business or having interest outside British India by more than *12 months*. The registrar may for special reason extend the period by a period not exceeding 3 months [see the new sub-s. (1) of s. 131].

The balance-sheet and the profit and loss account will have to be audited by the auditor of the company and his report attached thereto or a reference to the report made at the foot thereof. The secretary must read the auditors' report at the meeting and it will be open to inspection by the members [s. 131 (2)].

Every company, except a private company, must send a copy of the balance-sheet &c. so audited to the registered address of every member at least 14 days before the meeting at which it is to be laid before the members. A copy of the balance-sheet should also be kept at the registered office of the company for inspection of the members during the 14 days before the meeting [s. 131 (3)]. As to the penalty for default see s. 133 (3). The balance-sheet should be in the new Form F in the Third Schedule (see pp. 784-788) or as near thereto as circumstances admit (s. 132). As to what the profit & loss account should contain see the new sub-s. (3) of s. 132. As to the persons who should sign the balance-sheet see s. 133 and as to the consequence of its not being signed in accordance with that section see sub-s (3) thereof.

The new s. 131A lays down, what has hitherto been the practice, that the directors shall make out and attach to every balance-sheet their report regarding the state of the company's affairs, the amount, if any, which they recommend to be paid as dividend and the amount, if any, they propose to carry to the Reserve Fund &c. shown specifically on the balance sheet or to a Reserve Fund &c. to be shown specifically in a subsequent balance-sheet.

The new s. 132A requires the holding company to include in the balance-sheet particulars as to its subsidiary companies. For details in this respect read carefully s. 132A and s. 2 (2).

The new sub-s. (3) of s. 133 provides penalty for default in complying with the provisions of ss. 131, 132, 132A and 133.

After the balance-sheet and profit and loss account or the income and expenditure account has been laid before the company at the general meeting, three copies thereof signed by the manager or secretary are to be filed with the registrar at the same time as the copy of the annual list of members and summary prepared under s. 32 (see s. 134). For the consequences of default see sub-s (4) of s. 134.

If the general meeting does not adopt the balance-sheet, a statement of that fact and of the reasons therefor is to be annexed to the balance-sheet and the copies thereof required to be filed with the registrar [sub-s. (2) of s. 134].

A private company is not required to send to the registrar a copy of the balance-sheet [sub-s. (3) of s. 134].

Any member is entitled to be furnished with copies of the balance-sheet and the profit and loss account or the income and expenditure account and the auditor's report at a charge not exceeding 6 as. for every 100 words or fractional part thereof.

Holders of preference shares and debentures of a company have the same right to receive and inspect its balance-sheets and the directors' and auditor's reports as is possessed by the holders of ordinary shares. This provision does not apply to a private company, nor to a company registered before 1st April 1914 (s. 146), but applies to the trustees for holders of debentures of a public company whether registered before or after the said date [sub-s. (2) or s. 146].

Dividend and Reserve.

A company declares dividends in the ordinary general meetings; but the directors may pay such interim dividends as appear to them to be justified by the profits, if the articles so provide (see reg. 96, Table A).

No dividend can be paid out of capital and if the directors make such payment they may be personally liable. Reg. 97 of Table A provides that no dividend shall be paid otherwise than out of profits of the year or any other undistributed profits. It is sometimes very difficult to say what are profits. As to a general discussion on this point see the rather elaborate notes given at pp, 741-749.

Reg. 98 of Table A provides that subject to the rights of members with special rights as to dividends all dividends are to be paid according to the amounts paid on the shares. In the absence of such a provision in the articles members are entitled to dividend in proportion to their shares and not in proportion to the amounts paid thereon (see notes at pp. 750-753). As to who are entitled to the dividends and the rights of preference shareholders and others see notes at pp. 750-753.

After declaration of a dividend a notice and warrant is sent to each shareholder entitled to the dividend. For form of such notice and warrant see Form 123 at p. 1178.

In calculating dividend income-tax is deducted by the company from the amount due to each shareholder and a certificate of such deduction is given in the warrant itself. For form of such a dividend warrant with income-tax certificate see From 124 at pp. 1178-1179. As the income-tax is deducted at a certain rate in accordance with the Income-Tax Act, the shareholder on production of the income-tax certificate attached to his dividend warrant may get a refund from the income-tax authorities, if according to his income he is liable to pay income-tax at a lower rate.

For the form of Dividend Book see Form 126 at p. 1180.

Directors are not bound to distribute the whole profits of a year as dividends. The articles generally provide, as in Table A (see reg. 95 which has been now made compulsory), that no dividend shall exceed the amount recommended by the directors and that they may set apart certain amount as a reserve or reserves for particular purposes (see reg. 99 and notes thereto). Unless a sufficient reserve fund is built in this way the company is sure to come to grief in a succession of bad years or in the event of an unforeseen calamity.

A company may, if so authorized in the articles, capitalize its profits kept in a reserve or any othet account, and issue fully paid up shares or debentures to the members entitled to the same. For a detailed discussion see pp. 737-740.

Proceedings of ordinary general meetings.

Before the time of the meeting the secretary should have ready on the table typed agenda paper with spaces for the chairman's or the secretary's notes (see Form 121 at pp. 1176-1177), the original directors' report, balance-sheet and the auditor's report and a sufficient number of printed copies thereof, the register of members, minute-book of general meetings, index of members' addresses and specimen signatures (of members) book and proxies received with the date and time noted thereon. As each member enters the room his signature should be taken in a book kept for the purpose.

After election of the chairman or, if no election is necessary under the articles, after he has taken the chair, the chairman will conduct the proceedings in accordance with the articles and proceed with the items on the agenda paper, the secretary taking notes of the proceedings.

As to the form of the minutes of an ordinary general meeting see Form 122 at p. 1177, that of a demand for poll see Form 131 at p. 1182 and that of a list of members & votes &c. in the matter of taking poll see Form 132 at p. 1181.

Summary of share-capital and list of members.

Every company having a share capital must, within 18 months from its incorporation and thereafter once at least in every year, make a list and summary in accordance with s. 32 (see Form E at pp. 781-783) and complete it within 21 days after the day of the first or only general meeting in the year. This list and summary should be contained in a separate part of the register of members and a copy thereof signed by a director, manager or secretary with his certificate (see p. 783) should be immediately filed with the registrar (see the amended s. 32). As to the penalty for default see s. 32 (5). At the same time a copy of the balance-sheet (laid before the general meeting) signed by the manager or secretary should be filed with the registrar. If the general meeting did not adopt the balance-sheet, a statement of that fact and of the reasons thereof should be annexed to the balance-sheet and to the copies thereof required to the filed with the registrar (s. 134). For consequences of default see s. 134 (4).

A private company is not required to file with the registrar a copy of the balance-sheet but it must file the list and summary as provided by s. 32, as well as the certificate required under the new sub-s. (4) of s. 32 [see under the heading "private company" *post*].

Extraordinary General Meeting.

Where a special business requires it the directors may call an extraordinary general meeting. Where it is necessary to pass an "extraordinary resolution" or a "special resolution" (see s. 81) an extraordinary general meeting must be called. As to the notice of such a meeting see Form 127 at p. 1181.

Where a considerable number of members, dissatisfied with the management of the company or for any other valid reason, desire that an extraordinary general meeting should be called, a requisition, signed by the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums due have been paid, may be served upon the directors (for form of the requisition see Form 133 at p. 1183) who should immediately proceed to call an extraordinary general meeting. The requisition should state the object of the meeting and may consist of several documents in like form each signed by one or more requisitionists and deposited at the registered office of the company. If the directors do not cause the meeting to be called within 21 days from the date of deposit of the requisition, the requisitionists or a majority of them in value may themselves call the meeting; but in either case the meeting so called should be held within 3 months from the date of deposit of the requisition (see s. 78). If a special resolution is sought to be passed, at least 21 days' notice specifying the intention to propose the resolution as a special resolution should be given [see the new sub-s. (2) of s. 81].

Any meeting called by the aforesaid requisitionists should be called in the same manner, as nearly as possible, as that in which meetings are to be called by the directors [s. 78 (4)]. The proceedings of the meeting should be conducted in accordance with the provisions in the articles.

The new sub-s. (5) of s. 78 provides that any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration to such of the directors as were in default. This provides a salutary check on the directors who may be inclined to ignore the requisition.

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Extraordinary Resolution and Special Resolution.

For definitions of extraordinary and special resolutions see s. 81. It should be noted that for the purpose of passing an extraordinary resolution the notice calling the general meeting should specify the intention to propose the resolution as an extraordinary resolution. As to the form of such notice see Forms 128 (p. 1181) and 145 (pp. 1189-1190). The resolution must be passed by a majority of not less than *three-fourths* of such members *entitled to vote* as are present at the meeting *in person* or by proxy (where proxies are allowed). As to the members who are entitled to vote the provisions in this respect in the articles are to be looked into. Proxies cannot vote unless the articles allow them and then only on the conditions laid down there. As for instance, the articles generally provide that none but members of the company can be proxies or the proxy papers must be lodged at the company's office 72 hours before the meeting [see regulation 66 of Table A which has been made compulsory under the amended sub-s. (2) of s. 17]. As to the form of an extraordinary resolution see Form 135 at p. 1183.

A special resolution is passed in manner required for the passing of an extraordinary resolution at a general meeting of which at least 21 days' notice has been given specifying the intention to propose the resolution as a special resolution. As to the form of notice of the meeting see Form 129 at p. 1182 and Form 146 at p. 1190.

At any such meeting a declaration of the chairman on a show of hands that the resolution is carried will, unless a poll is demanded, be conclusive evidence of the fact. But a poll may be demanded by 5 persons entitled, according to the articles, to vote [see the new s. 79 (1) (c)]. The poll is to be taken by the chairman in accordance with the articles and in computing the majority on the poll reference is to be made to the number of votes to which each member is entitled according to the articles. Notices of the meetings are to be given and the proceedings conducted in manner provided by the articles. For other necessary informations see notes at pp. 200-203.

As to where extraordinary resolutions and where special resolutions are necesssary see pp. 199-200.

For forms of proxy, demand for poll and list of members in the matter of taking a poll see Forms 130 (p. 1182), 131 (p. 1182), and 132 (p. 1183) respectively.

As to the form of a special resolution see Form 136 at p. 1184, and a specimen of such a resolution is given in Form 137 at the same page.

In the case of an incorporated company it is not necessary that for voting on its behalf at a meeting of another company a proxy or power of attorney is to be given. It is sufficient if the former by a resolution of its directors authorize any person to act as its representative at any meeting of the latter company (s. 80).

A printed or type-written copy of an extraordinay or special resolution duly certified under the signature of an officer of the company is to be filed with the registrar within 15 days from the passing of the same [see the amended sub-s. (1) of s. 82]. See Form VIII at p. 822 and Form 138 at p. 1184.

Where articles have been registered a copy of special resolution the time being in force must be embodied in or annexed to every copy the articles issued after the date of the resolution. Where articles have not been registered a copy of every special resolution must be sent in print to any member at his request on payment of one rupee or such less sum as the company may direct [s. 82 (2) & (3)]. For default in complying with these provisions the company and its officers will be liable to the penalies provided in s. 82 (4), (5) and (6).

Minute Books.

All companies must keep in separate books minutes of the proceedings of general meetings and board meetings and every such minute should be signed by the chairman of the meeting or of the next meeting. If this is done, then a presumption arises as to the validity of calling, holding and proceedings of the meeting including all appointments of directors or liquidators [see sub-ss. (1) to (3) of s. 83].

The new sub-ss. (4) and (5) of s. 83 provide that the minute book of a *general meeting* held after 15th January, 1937 shall be kept at the registered office of the company and shall during business hours be open to inspection of any member without charge, and that any member shall at any time after 7 days from the meeting be entitled to be furnished within 7 days of his request with a copy of the minutes at a charge not exceeding 6 as. for every 100 words. For the penalty for not allowing such inspection or furnishing such copy see the new sub-s. (6) of s. 83, and the Court may by order compel an immediate inspection by, or direct that the copy be sent to, the member [see sub-s. (7) of s. 83].

Audit.

The first auditors of a company may be appointed by the directors before the statutory meeting, and if so appointed, will hold office until the first annual general meeting, unless previously removed by a resolution of the members in general meeting, in which case such members at that meeting may appoint auditors [s. 144 (7)]. The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act. The directors may also fix the remuneration of the auditors thus appointed by them. In any other case the remuneration is to be fixed by the company in general meeting [s. 144 (8) & (9)].

Save as mentioned above every company must at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting. But a person other than a retiring auditor cannot be appointed auditor at an annual general meeting unless notice of an intention to nominate him has been given by a member of the company to the company not less than 14 days before such annual general meeting, and the company is to send a copy of such notice to the retiring auditor, and to give notice thereof to the members by advertisement or any other mode allowed by the articles not less than 7 days before the annual general meeting [see s. 144, sub-s. (6) and proviso thereto]. An appointment of auditor made in contravention of these provisions is illegal. The appointment is to be made at each annual general meeting [sub-s. (3) of s. 144] and if an illegal appointment is made thereat, it is apprehended that the appointment of fresh auditors will have to be made by the Government under sub-s. (4).

No person can be appointed or act as auditor of any company other than a private company not being the subsidiary company of a public company unless he holds a certificate from the Central Government as provided by section 144 (read that section and notes at pp. 362-364).

If the appointment of an auditor is not made at an annual general meeting, the Government may, on the application of any member of the company, appoint an auditor for the current year, and fix his remuneration to be paid by the company [see s. 144 (4)].

In any case a director or officer of the company, a partner of such director or officer, any person indebted to the company and, except in the case of a private company not being a subsidiary company of a public company, any person in the employment of a director or officer, cannot be appointed auditor. If any auditor becomes indebted to the company his appointment will thereupon be terminated [see the amended sub-s. (5) of s. 144.]

As to the appointment of an auditor the position of a private company not being the subsidiary company of a public company is materially different from other companies. It appears that a private company can appoint any person as auditor, whether he holds a certificate from the Central Government or not, except a director or officer of the company or a partner of such director or officer. But there is no bar to the appointment of any person in the employment of such director or officer [see sub-s. (1) of s. 144 and cl. (iii) of sub-s. (5) thereof].

As to the powers and duties of auditors, what their reports and certificates should contain and whether they are officers of the company or not &c., &c. see s. 145 and notes at pp. 365-368.

For the purposes of ss. 235, 236 and 237 of the Act the word "officer" includes an auditor [see s. 2 (1) (11)]. Consequently an auditor may be liable for misfeasance mentioned in s. 235 (see notes at pp. 586 & 592). He may be liable to heavy punishment, if he destroys, mutilates, alters of falsifies or fraudulently secretes any books, papers or securities or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document of the company with intent to defraud or deceive any person [see s. 236 and s. 2 (1) (11)]. As to s. 237 see under the next heading.

New provisions relating to auditors.

Sub-s. (4) of the new s. 77 provides that the statutory report shall, so far as relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company, be certified as correct by the auditors.

The new s. 86C provides that any provision made in the articles or a contract for indemnifying any person employed as an auditor by the company against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence &c. shall be void. But the company may indemnify him against any liability incurred by him in defending any civil or criminal proceedings in which judgment is given in his favour or in which he is acquitted or if any relief is granted to him under s. 281 [see proviso (a) to s. 86C.]

Where a prospectus is issued by a company which has been carrying on business prior to the issue thereof, the prospectus must set out a report by the auditors with respect to the profits &c. of the company (including its subsidiary company, if any) mentioned in cl. (i) of the new sub-s. (1A) of s. 93.

The new s. 141A provides that if upon the report of inspectors appointed under s. 138 prosecutions are instituted against a person or persons, it will be the duty of the auditors of the company, past and present (other than the accused), to give to the Advocate General or the Public Prosecutor all assistance in connection with the prosecutions [see sub-ss. (2) & (3) of s. 141A.]

As to the obligation of the auditors regarding the balance-sheet and the profit and loss account see s. 145. The amended sub-s. (2) thereof requires that their report must state the following additional particulars: (1) whether or not in their opinion the balance-sheet and the profit and loss account are drawn up in conformity with the law, (2) whether in their opinion books of account have been kept by the company as required by s. 130.

The new sub-s. (2A) of s. 145 provides that where any of the matters referred to in sub-s. (2) is answered in the negative, or with a qualification, the report shall state the reason for such answer.

The new sub-s. (4) of that section provides that the auditors shall be entitled to receive notice of and attend any general meeting of the company at which any accounts examined or reported on by them are to be laid, and they may make any statement or explanation they desire with respect to the accounts.

The new sub-s. (5) of s. 145 lays down the penalty if the auditor's report does not comply with the requirements of that section.

In a voluntary winding up the declaration of solvency mentioned in sub-s. (1) of the new s. 207 must be supported by a report of the company's auditors [see sub-s. (2) of s. 207].

The new s. 237 has made detailed provisions for instituting criminal proceedings against past or present directors, managers or other officers [including auditors—see s. 2 (1) (11)] if it appears to the Court or the liquidator (in a voluntary winding up) in the course of a winding up of the company that any such person or persons have been guilty of any offence in relation to the company for which he is criminally liable. In such proceeding it shall be the duty of the auditor (if he is not an accused person), past or present, to give the Advocate General or the Public Prosecutor all assistance in connection with the prosecution [see sub-ss. (1), (2), (5), (6) and (7) of s. 237]. For the consequences of failure or neglect to give such assistance see sub-s. (8) of s. 237.

Under the new s. 281 the Court has power to give relief to persons employed as auditors of a company if in any proceeding for negligence, default &c., it appears to the Court that the auditors acted honestly and reasonably.

Registrar of Companies.

Under s. 6 the memorandum of association of a company must state the province in which its registered office is to be situate. The company must be registered at an office established in that province by the Government under s. 248.

Any person may inspect the documents kept by the registrar on payment of such fees, as may be fixed by the Government, not exceeding one rupee for each inspection ; and any person may get a certificate of incorporation of any company or a certified copy or extract of any other document or any part thereof on payment of such fees, as may be fixed by the Government, not exceeding Rs. 3 for a certificate of incorporation and not exceeding 6 as. for every 100 words or part thereof required to be copied (s. 248).

As to the presumption of correctness and relevancy of the documents certified by or filed with the registrar see notes at 615.

For fees to be paid to the registrar see pp. 760-762, p. 811 and p. 858.

Investigation by the registrar.

On perusal of any document submitted to him under the Act if the registrar is of opinion that any further information or explanation is necessary he may call for the same ; and all persons who are or have been officers or liquidators of the company are bound to give such information or explanation on pain of a fine not exceeding Rs. 50 in respect of each offence, and the Court may on the application of the registrar and upon notice to the company make an order on the company for production of such documents as in its opinion may reasonably be required by the registrar for his investigation and allow the registrar inspection thereof on such terms and conditions as it thinks fit. The information or explanation, if furnished, will be annexed to the original document and will be subject to the like provisions as to the inspection and taking of copies as the original document [see the amended s. 137 and the new sub-s. (7) thereof].

If the information or explanation is not furnished within the specified time or if it appears to the registrar to be unsatisfactory or if it discloses an unsatisfactory state of affairs, it will be the duty of the registrar to make a report to the Government [see s. 137].

If it is represented to the registrar in materials placed before him by any contributory or creditor that the business of the company is carried on in fraud of its creditors, or in fraud of persons dealing with the company or for a fraudulent purpose, the registrar may, after giving the company an opportunity of being heard, by written order call on the company for information or explanation on matters specified in the order. If upon investigation the registrar is satisfied that the representation upon which he has taken action is frivolous or vexatious, he must disclose the identity of the informant to the company [see the new sub-s. (6) of s. 137].

The amended s. 166 gives the registrar power to make an application to the Court for winding up a company with the previous sanction of the Government on the ground mentioned in cl. (i) of proviso (aa) of s. 166 (see s. 166).

The new s. 249A provides that if a company having made default in complying with any provision of the Act in respect of filing with, delivering or sending to, the registrar any return, account or other document or in giving notice to him of any matter, fails to make good the default within 14 days after notice to the company requiring it to do so, the Court may, on an application by any member or creditor of the company or by the registrar, make an order directing the company or any officer thereof to make good the default within such time as may be specified in the order. Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer thereof responsible for the default.

Inspection and Institution of Prosecution.

Upon the report of the registrar under s. 137 or on the application, in the case of a banking company of members holding not less than one-fifth of the shares issued, and in the case of any other company having a share capital, of members holding not less than one-tenth of the shares issued or in the case of a company not having a share capital, on the application of one-fifth of the members, the Government may appoint one or more competent inspectors to investigate the affairs of the company in such manner as the Government may direct (s. 138). The members applying are to satisfy the Government of their *bona fides* and may be directed to give security for costs of the inquiry (s. 139). All persons who are or have been officers of the company are bound to produce to the inspectors all books and documents in their custody or power and the inspectors may examine any person on oath. As to the penalty for disobedience see s. 140 (3). The inspectors will report their opinion to the Government who will send a copy thereof to the registrar and another copy to the registered office of the company and a further copy to the applicants at their request. All expenses relating to the investigation will have to be borne by the applicants, but the Government may direct them to be paid by the company (see the amended s. 141).

Formerly there was no machinery for instituting prosecutions against delinquent persons upon the report of the inspectors. Now this defect has been cured by reproducing s. 136 of the English Companies Act of 1929 in the new s. 141A. It provides that if from any report made under s. 138 it appears to the Government that any person has been guilty of any offence in relation to the company for which he is criminally liable, the Government shall refer the matter to the Advocate General or the Public Prosecutor. If that officer considers that the case is one in which a prosecution ought to be instituted, he shall cause proceedings to be instituted and it shall be the duty of all officers and agents of the company, past and present (other than the accused), to give him all reasonable assistance. The word "agents" in this section includes bankers, legal advisers and auditors employed by the company.

If a director, manager or other officer is convicted as a result of such prosecution, he shall not, without leave of the Court, be a director of or in any way concerned in or take part in the management of a company for 5 years from the date of such conviction [sub-s. (4) of s. 141A].

A company may also by a special resolution appoint such inspectors and they will have idential powers except that instead of reporting to the Government they will report in such manner and to such persons as the company in general meeting may direct (s. 142).

A copy of the report of any inspector appointed under the Act, authenticated by the seal of the company will be admissible in evidence as evidence of the opinion of the inspector (s. 143).

Service and Authentication of Documents.

A document may be served on a company by leaving it at or by sending it by post to its registered office (s. 148) ; and a document may be served on the registrar by sending it to him by post or delivering it to him or by leaving it for him at his office (s. 149).

A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company and need not be under its common seal (s. 150).

Arbitration and Compromise.

A company can by written agreement refer an existing or a future dispute to arbitration under the Indian Arbitration Act, 1940. It can also delegate to the arbitrator power to settle any terms or to determine any matter which its directors or other managing body are entitled to settle or determine. In such arbitration the provisions of the Indian Arbitration Act, 1940 will apply (s. 152 and noted thereto).

It should be remembered in this connection that an award under the said Act is enforceable as a decree, and that no decree should be passed upon such an award, and if passed it would be without jurisdiction and a nullity (see pp. 372-373). As to the object of s. 152 and other matters see notes at pp. 370-373.

Carrying on Business with less than the Legal Minimum of Members.

A company must not carry on business for more than six months after the number of its members has been reduced to less than two in the case of a private company, and less than seven in the case of any other company. For the consequences of doing so see s. 147. It may also be wound up under s. 162 (iv).

Private Company.

A private company is almost on the same footing as a public company with the following differences :—

(1) For forming a private company only two persons are necessary to subscribe the memorandum of association (s. 5). As regards the memorandum of association there is no other difference between a public and a private campany.

(2) A private company must by its articles restrict the right to transfer its. shares [s. 2 (13) (i) (a)]. Restrictions are usually placed on transfer of shares without first obtaining the approval of the directors, or transfer to outsiders without first offering them to the existing

members at a price to be determined in accordance with the provisions therefor in the articles. This serves the double purpose of *first* ensuring the continuance of the private character of the company, and *secondly* of preventing an increase in the numbers of members.

(3) It must limit the number of its members to fifty exclusive of persons in the employ of the company. Therefore it is necessary to frame the articles so that by transfer of shares or otherwise the number of its members does not exceed fifty. The joint holders of a share or shares will be considered as a single member.

(4) A private company must by its articles [s. (13)] prohibit any invitation to the public to subscribe for any shares or *debentures* of the company. Not only the shares but also the debentures of the company should never be offered to the public for subscription.

A private company must not allow the number of its members to fall bellow two [see ss. 147 and 162 (iv)].

If a private company fails to observe the above restrictions it will lose the privileges granted by the Act to these companies. For an enumeration of the privileges see pp. 38-40 and for commentary on s. 2 (13) see pp. 37-40.

On account of its special privileges and also of the advantages of its distinct legal personality apart from its component members and of a limited liability without the apprehension of losing the private character, a large number of firms have been and are being converted into private limited companies. As to the agreement for sale of a business to a new private company see Form 4 at pp. 1092-1093, and for agreement by partners to convert the partnership business into a private company see Form 5 at p. 1093. For the form of the articles of association of a private limited company intended to be managed by the Governing Director see Form 65 (pp. 1142-1146).

New provisions regarding private companies.

The amended s. 17 provides that the articles of association of a company shall in any event be deemed to contain regulations indential with or to the same effect as regulations 56, 66, 71, 78, 79, 80, 81, 82, 95, 97, 105, 107, 112, 113, 114, 115 and 116 contained in Table A. But regulations 78 to 82 both inclusive shall not be deemed to be included in the articles of a private company except one which is the subsidiary company of a public company.

A private company must send with the annual return, required by sub-s. (1) of s. 32, a certificate signed by a director or other officer of the company that the company has not, since the date of the last return or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and where the annual return discloses the fact that the number of members of the company exceeds 50, also a certificate so signed that the excess consists wholly of persons who under sub-clause (b) of clause (13) of sub-s. (1) of s. 2 are not to be included in reckoning the number of 50 [see the new sub-s. (4) of s. 32].

The new s. 154 following s. 27 of the English Act of 1929 provides that if a company being a private company alters its articles in such manner that they no longer include the provisions of s. 2 (1) (13) (b), the company shall, as on the date of the alteration, cease to be a private company and shall, within 14 days after the said date, file with the registrar a prospectus or a statement in lieu of prospectus in Form II in the Second Schedule (see pp. 766-770). For the consequences of default see sub-s. (2) of s. 154. As to the requirements of prospectus, if one is filed, see proviso to the new sub-s. (4) of s. 93.

Where the articles of a private company include the above provisions, but default is made in complying with any of those provisions, the company will cease to be entitled to the privileges and exemptions conferred by the Act on private companies, and thereupon the provisions of the Act will apply to the company as if it were not a private company [sub-s. (3) of s. 154]. Power has however been given to the Court for relieving a company from these consequences [see proviso to sub-s. (3) of s. 154].

The Companies (Amendment) Act, 1936 by introducing new provisions has made, as regards the privileges and exemptions, a distinction between private companies which are not, and those which are, subsidiary companies of public companies.

The following privileges and exemptions have been conferred on all private companies, whether subsidiary or not :—

(1) The provisions of s. 43 (issue of share-warrants to bearer) do not apply to a private company [s. 43 (2)].

(2) The provisions of s. 77 (holding statutory meeting and sending statutory report to members and the registrar) do not apply to a private company [s. 77 (11)]. It should be noted that under the old s. 77 the holding of a statutory meeting was obligatory though not the sending of the report to the registrar.

(3) The provision that notwithstanding anything contained in the articles not less than two-thirds of the whole number of directors shall be persons whose period of office is liable to determination at any time by retirement of directors in rotation does not apply to a private company [s. 83B (2)].

(4) S. 84 providing restrictions on appointment or advertisement of directors does not apply to a private company or a company which was a private company before becoming a public company [sub-s. (3) of s. 84]. For the definition of a public company see clause (13A) of sub-s. (1) of s. 2.

(5) The restriction put by s. 87-I on managing agents in the appointment by them of directors (more than one-third of the whole number of directors) does not apply to a private company.

The following privileges and exemptions have been conferred on those private companies only which are not subsidiary companies of public companies :—

(1) The new provisions of sub-s. (1) of s. 79 relating to general meetings and notices, proxies, polls and rights and liabilities of classes of shareholders relating thereto will not apply to such a company.

(2) The obligation to have at least 3 directors will not apply to such a company [s. 83A (2)].

(3) Prohibition of making loans or guaranteeing any loan to a director will not apply to such a company [s. 86D (3)].

(4) Restriction on the powers of directors regarding selling or disposing of the company's undertaking and remitting any debt due by a director will not apply to such a company (s. 86H).

(5) Limitation of the duration of a managing agent's office to 20 years will not apply to such a company [s. 87A (5)].

(6) Restrictions on the provisions for remuneration of a managing agent will not apply to such a company [s. 87C (4)].

(7) Prohibition of loans to managing agents and restrictions on their powers of contract for the sale, purchase &c. with the company will not apply to such a company [s. 87D (4)].

(8) Prohibition of voting by interested directors in respect of contracts or arrangements will not apply to such a company, [proviso to s. 91B (3)].

(9) Provisions regarding contracts by agents in which the company is the undisclosed principal made in s. 91D will not apply to such a company [s. 91D (1)].

(10) The obligation to have a certificated auditor and the prohibition of appointing as auditor a person who is in the employment of a director or officer of the company will not apply to such a company [s. 144 (1) & (5)].

In a word a private company which is the subsidiary company of a public company will not have the latter set of privileges and exemptions (1 to 10) but all other private companies will enjoy both the sets of privileges and exemptions mentioned above.

In drawing up the articles of association of a private company one should remember that in addition to the matters mentioned in clause (13) of sub-s. (1) of s. 2 provisions are to be made in respect of matters referred to in sub-s. (2) of s. 79, otherwise they will automatically apply to the company.

The advantage of conversion of a private company into a public company is that the company can get additional capital by issuing its shares to the public and by raising money by the issue of its debentures to the public.

Company Limited by Guarantee.

A company limited by guarantee may or may not have a share capital. In the latter case in addition to the required particulars (see s. 7) the memorandum must state that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such sum as may be required not exceeding a specified amount [s. 7(1) (v)].

If the company has a share capital, the memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount; no subscriber of the memorandum can take less than one share; and each subscriber must write opposite to his name the number of shares he takes.

Associations for mutual assurance and those mentioned in s. 26 are generally formed as companies limited by guarantee.

As to the form of the memorandum of association of a company limited by guarantee and having a share capital see Form C at pp. 778-779 and that of its articles see p. 779. For the memorandum of such a company not having a share capital see Form B at p. 774 and Form 11 at pp. 1100-1101; and for the form of the articles of association of such a company see pp. 774-778. As to the fees for registering a company limited by guarantee see pp. 760-761 and for stamp duty see App. L. As to such companies generally see s. 7 and notes at p. 72.

In the case of a company limited by guarantee and not having a share capital and registered after 1st April, 1914, the memorandum, the articles or a resolution of the company cannot give any person a right to participate in the divisible profits of the company otherwise than as a member. If the memorandum or articles or any resolution of a company limited by guarantee and registered after 1st April, 1914, purport to divide the undertaking of the company into shares or interests, this will be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests are not specified by such memorandum, articles or resolution (s. 27).

A company limited by guarantee must register with its memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company. If the company has not a share capital, the articles must also state the number of members with which the company proposes to be registered (s. 17).

As to the articles generally see notes at pp. 86-90; and as to the alteration of articles see s. 20 and notes at pp. 91-95.

A company limited by guarantee and registered after 1st April, 1914, may, if it has a share capital and is so authorized by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of the Act (s. 66).

Unlimited Companies.

As has been observed above [see p. (4)] unlimited companies are rarely formed now-a-days. For definition of an unlimited company see s. 5 (iii). As to the contents of the memorandum of such a company see s. 8. For the form of memorandum of an unlimited company having a share capital see Form D at p. 780 and for the form of its articles see pp. 780-781. See also notes at p. 73.

An unlimited company must register, with its memorandum, articles signed by the subscribers to the memorandum, and if the company has a share capital, the articles must state the amount of share capital with which the company proposes to be registered. If it has not a share capital the articles must also state the number of members with which the company proposes to be registered (s. 17).

As to the articles generally see notes at pp. 86-90 and as to the alteration of the articles see s. 20 and notes at pp. 91-95.

Any company registered as an unlimited company may register under the present Act as a limited company, but such registration will not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of the company before the registration and these debts &c. may be enforced in manner provided by Part VIII of the present Act (s. 67).

An unlimited company having a share capital may, by its resolution for registration as a limited company, (a) increase the nominal amount of its share capital subject to the condition laid down in s. 68 and (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purpose of the company being wound up (s. 68).

Reserve Liability of Limited Company.

A limited company may by special resolution provide that any portion of its share capital not already called up shall not be capable of being called up, except in the event and for the purpose of the company being wound up (see s. 69 and notes thereto).

Existing Companies.

An "existing company" has been defined as a company formed and registered under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882 [s. 2 (7)]. The present Act applies to such a company, with the exception of Table A. See ss. 250 to 252.

Subsidiary Company and Holding Company.

For the definition of a subsidiary company see the new sub-s. (2) of s. 2. Roughly speaking it is a company more than 50 per cent. of whose issued share capital or voting power is held by another company or the majority of whose directors can be appointed by another company which is called the holding company. A subsidiary company, it appears, may be a public company, a private company or may not be a company within the meaning of the Companies Act. Where the shares of such a company are held as security by a company the ordinary business of which is the lending of money or where the majority of directors can be appointed by a company by virtue of powers contained in a debenture trust-deed, the former company will not be deemed to be a subsidiary company of the latter.

Where a prospectus is issued by a company which has been carrying on business prior to issue thereof the report required under sub-s. (1A) of s. 93 must show the profits of a subsidiary company also.

Where a holding company holds shares, directly or through a nominee, in one or more subsidiary companies, there shall be annexed to the balance sheet of the holding company the last audited balance sheet, profit and loss account and auditors' report of the subsidiary company or companies, and a statement signed in pursuance of s. 133 stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to what extent—(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both, and (b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the company as disclosed in its accounts. For detailed provisions in this respect the new s. 132A should be carefully read.

The holding company may by a resolution authorize representatives named therein to inspect the books of account kept by a subsidiary company [sub-s. (5) of s. 132A].

The rights conferred by s. 138 upon members of a company may be exercised in respect of a subsidiary company by members of the holding company as if they were members of that subsidiary company [sub-s. (6) of s. 132A].

S. 277M provides that a banking company shall not form any subsidiary company except a subsidiary company formed for the purpose of undertaking and executing trusts, undertaking the administration of estates as executor, trustee or otherwise and such other purposes as set forth in s. 277F as are incidental to the business of accepting deposits of money on current account or otherwise. Save as aforesaid a banking company shall not hold shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding forty per cent. of the issued share capital of that company [see sub-s. (2) of s. 277M]. As to the saving of shares held by a banking company before 15th January, 1937 see proviso to sub-s. (2) of s. 277M.

A subsidiary company which is a private company is not entitled to most of the privileges and exemptions enjoyed by ordinary private companies [see under the heading Private Companies, *ante*].

Companies Authorised to be Registered under the present Act.

As to the companies authorized to be registered under the present Act, requirements for and mode of such registration and the effect of such registration see ss. 253 to 269. For applications by an existing company for registration as a limited company and an unlimited company, see Forms XXX and XXXI respectively at pp. 842-844. In the case of registration of an existing company as a limited company, for filing with the registrar copy of resolutions assenting to registration with limited liability, see Form XXXII at p. 844. For the filing of a list of members under s. 255 in connection with registration of an existing company see Form XXXIII at pp. 844-845. For the filing of statement of nominal capital, its division into shares, the number of shares taken and the amount paid thereon, or the amount of stock of which it consists also of the name and registered office of the company under ss. 255 and 266, see Form XXXIV at pp. 845-846. For declaration verifying documents delivered to the registrar with application for registration, see Form XXXV at p. 846. When a company is registered under these provisions all suits and other proceedings against it instituted before such registration will be allowed to proceed, but a decree or order passed therein will not be capable of execution against any individual member of the company, and in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company (s. 265). The provisions of the present Act in respect of staying and restraining suits and legal proceedings upon the presentation of a winding up petition, and those in respect of commencement of and proceeding with suits and legal proceedings after the winding up order will apply to such a company.

Companies Established Outside British India.

Every company incorporated outside British India which has or establishes a place of business in British India is required to comply with the provisions of s. 277. The following Forms are to be used for the following purposes: for particulars of mortgages or charges, Form XVIII (p. 831); for particulars of modification of mortgage or charge, Form XIX (p. 832); for particulars of mortgage or charge subject to which property has been acquired on or after 15th January, 1937; Form XX (p. 833); for registration of series of debentures, Form XXII (p. 836); for registration when more than one series of debentures, Form XXIII (p. 837); for memorandum of satisfaction of mortgage or charge, Form XXVII (pp. 840-841); for filing charter &c., mentioned in cl. (a) of sub-s. (1) of s. 277, constituting or defining the constitution of the company, Form XXXVI (pp. 847-848); for notice of address of the registered or principal office of the company, Form XXXVII (p. 849); for lists of directors and managers required by s. 277, Form XXXVIII (pp. 849-850); for return of persons authorised to accept service under s. 277, Form XXXIX (p. 850); for notice of alteration in charter &c. under s. 277, Form XL (p. 851); for notice of alteration in the registered or principal office of the company under s. 277, Form XLI (pp. 851-852); for notice of situation of the principal place of business in British India or of any change therein, Form XLII (pp. 852-853); for notice of alteration of directors and managers, Form XLIII (p. 853); for notice of alteration in the names of (or ?) addresses of persons authorised to accept process, Form XLIV (p. 854); for statement of affairs under s. 277, Form XLV (p. 855).

New provisions.

With respect to the above companies a number of new provisions has been introduced by the Companies (Amendment) Act, 1936 and the amending Act II of 1938.

The company is to file with the registrar the full address of that office in British India which is to be deemed the principal place of its business [see the new cl. (e) of sub-s. (1) of s. 277].

If the balance sheet (three copies of which are to be filed with the registrar) of such a company required to be filed under cl. (i) of sub-s. (3) of s. 277 does not contain all the information provided for in Form H in the Third Schedule (see pp. 792-794), such supplementary statements as will furnish such information will have to be filed every year with the registrar of the province in which the company has its principal place of business [see cl. (i) of sub-s. (3) of s. 277].

Every company incorporated outside British India shall, if the liability of its members is limited, cause notice of that fact to be stated in legible characters in every prospectus inviting subscriptions for its shares, and in all bill-heads and letter paper, notices, advertisements and other official publications of the company in British India, and to be affixed on every place where it carries on business [s. 277 (5)].

As to the restriction on sale and offer for sale of shares and debentures before the issue of a prospectus and as to the contents &c. of such prospectus see ss. 277A and 277B. For the consequences of cotravention of these sections see sub-s. (5) of s. 277A.

It shall not be lawful for any person to go from house to house offering shares of such a company for subscription or purchase (see s. 277C). For the consequences of contravention of this section see sub-s. (3) of this section.

As to the provision for registration of charges see the new s. 277D. The provisions of ss. 118 and 119 (registration and appointment of a receiver and filing his account) will *mutatis mutandis* apply to such companies. The provisions of s. 130 will apply to such companies to the extent of requiring them to keep at their principal place of business in British India books of account regarding money received and expended, sales and purchases made, and assets and liabilities in relation to their business in British India [see the new s. 277E]. The amendments made in ss. 277D and 277E by the amending Act II of 1938 have been shown within square brackets.

Compromise and Arrangement.

S. 153 of the Act provides that where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the Court may on the application of the company, or any creditor, member or liquidator of the company, order a meeting to be called, held and conducted in such manner as the Court directs. If a majority in number representing three-fourths in value of such creditots or members present in person *or by proxy* at the meeting agree to any compromise or arrangement, the same shall, if sanctioned by the Court, be binding on the creditors or members whose meeting was directed to be held and also on the company, and in the case of a company in the course of being wound up, on the liquidator and contributories.

This section is wide enough to include any reasonable compromise or arrangement and, as a matter of fact, advantage has been taken of this section to carry through schemes of the most varied character.

In this country, particularly in Bengal, on account of economic distress a large number of loan companies which took deposits of money on condition to repay at a notice of a week, 6 months, a year or at most 2 or 3 years and having no corresponding liquid assets, has been unable to meet the demands of the depositors. They have largely taken and are taking advantage of this section. Most of them having adequate securities in landed properties, hope to repay the depositors' money if they get sufficient time. For this purpose a scheme is prepared for sanction at a depositors' and creditors' meeting under which they agree not to demand their dues (whether under judgment or not) for a certain number of years in which time the company undertakes to pay them gradually and rateably as the company's dues from its debtors are realized. As regards management in the meantime, majority of the directors are elected under the scheme by the depositors and creditors and the directors again elect the managing directors and other executive authorities of the company and control them in the matter of realization and distribution of the moneys realized. The depositors and other creditors readily assent to the scheme as they have found by experience that they may get more in this way than by a compulsory liquidation, which, to say the least, is troublesome and expensive. It is not unlikely that in this country this alternative mode of liquidation will more and more appeal to the creditors of companies which cannot readily meet their obligations but can do so partly at least in course of a few years under the control of directors appointed by the creditors. It should be noted however that for this purpose sometimes it may be found necessary to alter the articles of association.

In this way within the time allotted in the scheme the assets of the company must be realized and distributed ; but on the expiration of the time mentioned above, the creditors will be at liberty to take whatever action they choose.

In England the commonest form of scheme is, as observed in Palmer's Company Law [13th edition at p. 463], that a new company is to be formed, that the debenture-holders of the existing company shall take in exchange debentures or preference shares of the new company and the unsecured creditors shall take a composition of so much in the pound payable partly in cash and partly in shares or debentures in the new company and that the shareholders receive only partly paid up shares in the new company.

As a matter of fact any scheme of reconstruction of a company, reorganization of its share capital or amalgamation with another company may be carried through under this section.

As to the principle on which the section is based, the Court's jurisdiction, what the Court will consider in sactioning a scheme, meeting, voting and proxy &c. see pp. 375-387.

As to the application for sanction of the scheme and the procedure in Court see Rules 40-47 at pp. 863-864.

New provisions.

An order made by the Court under sub-s. (2) of s. 153 sanctioning the scheme shall have no effect until a certified copy of the order has been filed with the registrar, and a copy of every such order must be annexed to every copy of memorandum of association issued after the order has been made [sub-s. (3) of s. 153]. For the consequences of default in complying with sub-s. (3) see sub-s. (4).

Power has been given to the Court to stay any suit or proceeding against the company pending an application under s. 153 [see sub-s. (5)]. A right of appeal has also been given from a decision of the Court [see sub-s. (7)].

For the purpose of this section unsecured creditors who may have filed suits or obtained decrees will be deemed to be of the same class as other unsecured creditors [see sub-s. (6)].

Reproducing ss. 154 and 155 of the English Act of 1929 the new ss. 153A and 153B have made detailed provisions for facilitating arrangements and reconstructions, amalgamations, compromises and arrangements and power has been given to acquire shares of dissenting shareholders in this connection. For form of notice to dissentient shareholders under s. 153B, see Form XXIX at pp. 841-842.

Defunct Companies.

There is a way in which a company's existence may inexpensively be brought to an end. S. 247 provides that if the registrar has reasonable cause to believe that a company is not carrying on business or in operation he may proceed under this section and after complying with the provisions thereof strike its name off the register, and on the publication in the local official Gazette of a notice to that effect, the company will be dissolved. But the liability of every director and member of the company will continue and may be enforced as if the company had not been dissolved.

If the company or any member or creditor thereof feel aggrieved by the company having been struck off the register, the Court may, on application, order the name of the company to be restored to the register. See s. 247 and notes at pp. 613-614.

When the directors or other authorities of a company find that on account of poor response of the investing public to take up its shares or for any other reason the company is unable to commence business, or on account of want of fund and inability to raise money it cannot carry on business and there are no assets of the company worth the name for distribution amongst the creditors and shareholders, all that they have to do is to inform the registrar that the company *is not in operation* or has ceased to carry on business and the registrar will take necessary action.

Court having Jurisdiction.

Cl. (3) of sub-s. (1) of s. 2 says that "the Court" means the Court having jurisdiction under the Act. S. 3 says that the Court having jurisdiction under the Act shall be the High Court having jurisdiction in the place at which the registered office is situate. For the purposes of jurisdiction to wind up companies the expression "registered office" means the place which has longest been the registered office of the company during the 6 months immediately preceding the presentation of the petition for winding up [see sub-s. (2) of s. 3 and notes at pp. 48-49]. Where the High Court makes an order for winding up a company, it may direct all subsequent proceedings to be had in a District Court [see s. 164]. The High Court has power to transfer winding up proceedings from one District Court to another [s. 165].

Under the proviso to sub-s. (1) of s. 3 the Local Government could however empower any District Court to exercise all or any of the jurisdictions conferred by the Act upon the High Court, and in that case such District Court was, as regards the jurisdiction so conferred, the Court in respect of all companies having their registered offices in the district.

By the Government of India (Adaptation of Indian Laws) Order, 1937 which came into force on 1st April of that year, the expression

"Central Government" in s. 3, as in many other sections, has been substituted for the words "Local Government". The effect is that from the aforesaid date the power referred to in the last paragraph is to be exercised by the Central Government. But with effect from 1st April, 1938 the Central Government has entrusted the Provincial Governments with its functions in respect of all the provisions of this Act other than sub-s. (3) of s. 11, sub-s. (5) of s. 107, sub-ss. (1), (2A) and (2B) of s. 144, s. 151, sub-s. (1) of s. 249, sub-s. (8) of s. 277 and sub-s. (2) of s. 277G (see Gazette of India dated 26th March, 1938, Part I, p. 440). In respect of companies whose objects are confined to a single province and which are not trading corporations within the meaning of s. 2A (see pp. 26 and 42) these powers are the powers of the Provincial Government (see s. 289A and notes at p. 660).

As a matter of fact various Local Governments conferred limited or full jurisdictions on selected District Courts in their provinces long ago (see notes under s. 3, pp. 44-45).

Winding up.

There are three modes of winding up a company, namely—(1) winding up by the Court otherwise called compulsory winding up, (2) voluntary winding up and (3) winding up subject to the supervision of the Court (s. 155). The voluntary winding up may be either the members' or the creditors' [see sub-s. (3) of s. 207].

Winding Up by the Court.

Grounds.

A company may be wound up by the Court for the following reasons :—

(1) If the company has passed a special resolution that the company be wound up by the Court. In such a case the directors are entitled to present the winding up petition in the name of the company. See s. 162 (i) and noties at p. 407. As to what is a special resolution see s. 81 and notes.

(2) If default is made in filing the statutory report or in holding the statutory meeting [s. 162 (ii)]. Such a petition cannot be presented by any person except a shareholder, nor before the expiration of 14 days after the last day on which the meeting ought to have been held [see s. 166, proviso (b)]. If a petition is presented on this ground the Court may, instead of directing that the company be wound up, give direction for the statutory report to be filed or the meeting to be held, or make such other order as may be just [s. 77 (9)].

(3) If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year [see s. 162 (iii) and notes at p. 407]. It should be remembered that after allotment of shares a company is to apply to the registrar of companies for certificate for commencement of business on compliance with the requirements of s. 103 (1) and the statutory meeting is to be held within 6 months from the date at which the company is entitled to commence business. So if a company delays in applying for the certificate for commencement of business for more than a year, it cannot be proceeded

against under clause (ii) of s. 162, but a petition for winding it up may be presented under clause (iii).

(4) If the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven [see s. 162 (iv) and notes at p. 408].

(5) If the company is unable to pay its debts. A company will be deemed to be unable to pay its debts in the following cases :—

(a) If a creditor to whom the company is indebted in a sum exceeding Rs. 500 has served a demand on the company which has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the *reasonable* satisfaction of the creditor [see s. 163 (1) (i) and for detailed notes see pp. 408-411]. As to the meanings of the words employed in s. 163 and notes thereto see pp. 418-421. It was held that a notice of demand signed by an Advocate or any other agent did not satisfy the requirements of s. 163 (see notes at p. 420). But the new sub-s. (2) of s. 163 provides that the demand will be deemed to have been duly made if it is signed by an agent or legal adviser duly authorized on behalf of the creditor, or in the case of a firm if it is signed by such agent or by a legal adviser or any one member of the firm on behalf of the firm.

(b) If execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part [see s. 163 (1) (ii)].

(c) If it is proved to the satisfaction of the Court that the company is unable to pay its debts which include the contingent and prospective liabilities of the company [see s. 163 (1) (iii)]. It should be remembered, as observed by Lord Wrenbury, that a company may be at the same time insolvent and wealthy (see notes at p 408). A company will be deemed to be unable to pay its debts within the meaning of s. 162 (v) if it is unable to meet its current demands, although the assets when realized may exceed its liabilites (see notes at pp. 408-411).

(6) If the Court is of opinion that it is just and equitable that the company should be wound up. See s. 162, cl. (vi) the terms of which are very wide. A company may be wound up under this clause where its substratum is gone, where it is a "bubble company", where there is a complete deadlock in its management, where it is formed to carry on an illegal business, where its object is fraudulent or where the particular circumstances of a case require it (see notes at pp. 412-417.

Contributorries.

The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up (see s. 158).

The new sub-s. (1) of s. 159 provides that the liability of a contributory shall create a debt payable at the time specified in the calls made on him by the liquidator.

No claim on the liability of a contributory will be cognizable by any Court of Small Causes outside the towns of Calcutta, Madras and Bombay [sub-s. (2) of s. 159].

If a contributory dies, his legal representatives and heirs will be liable to the extent of the estate of the deceased coming into their hands [sub-ss. (1) and (2) of s. 160].

The new sub-s. (3) of s. 160 provides that for the purposes of that section the surviving co-parceners of a contributory who is a member of a Mitakshara joint Hindu family shall be deemed to be his legal representative.

Subject to the provisions of s. 156 in *every* winding up every present and past member of a company shall be liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves with the following qualifications :—

(1) A past member shall not be liable to contribute if he has ceased to be a member for 1 year or upwards before the commencement of the winding up (for the dates of commencement of different kinds of winding up see p. 428), nor in respect of debts or liabilities contracted after he had ceased to be a member. A past member will not also be made liable unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Act. So it is apprehended that if all the required contributions are realised from all the present members, but they do not satisfy the debts, liabilities, &c. mentioned above, still the past members will not be liable [see clauses (i) to (iii) of sub-s. (1) of s. 156].

(2) Members, past or present, of companies limited by shares are liable to contribute only the amount unpaid on the shares and no more [see cl. (iv) of sub-s. (1) of s. 156].

(3) Members of a company limited by guarantee are liable to contribute only up to the amount of their guarantee and no more [see cl. (v) of sub-s. (1) and sub-s. (2) of s. 156].

As to the saving of any provision in a policy of insurance see cl. (vi) of sub-s. (1) of s. 156.

As to the set off of dividends &c. due to a member against the amount for which he is liable as a contributory see cl. (vii) of sub-s. (1) of s. 156.

For the liability of directors whose liability is unlimited see s. 157.

Petition for winding up.

A petition for winding up a company may be presented by the company itself, by any creditors or creditor including any contingent or prospective creditor, by any contributory or contributories, or by all or any of those parties, together or separately, or by the registrar (see the amended s. 166).

As to who are the contributories and their liabilities see ss. 156 to 161 and notes to those sections. A contributory is not entitled to present a winding up petition unless (i) the number of members of the company is reduced, in the case of a private company, below 2, or, in the case of any other company, below 7, or (ii) he is a registered holder of the share or shares for at least 6 months during the 18 months before the commencement of the winding up, or they have devolved on him through the death of a former holder (see s. 166 and notes at pp. 423-426). A winding up by the Court commences at the time of presentation of the petition (s. 168).

The registrar of companies will not be entitled to present a winding up petition—(1) except on the ground that from the financial condition of the company as disclosed in its balance sheet or from the report of the inspector appointed under s. 138 it appears that the company is unable to pay its debts, and (2) unless the previous sanction of the Government has been obtained therefor after the company has been afforded an opportunity of being heard [see proviso (aa) to s. 166].

A petition by a contingent or prospective creditor will not be heard until he has given security for costs and until a *prima facie* case for winding up has been established to the satisfaction of the Court [see s. 166 (c)]. As to which of the creditors can present a petition for winding up and which of them cannot, see notes at p. 423.

Different High Courts have made rules prescribing the mode of proceedings to be had for winding up a company in such Court and the Courts subordinate thereto (see s. 246). As to those made by the Calcutta High Court see App. F, pp. 859-918. For want of space the rules made by other High Courts could not be given in this book, but they are on the same lines as they are all presumably based upon the English Companies (Winding up) Rules.

As to the verification, advertisement and service of the petition &c. see Rules 51-57 at p. 865, and also the forms referred to there.

As to the attendance of creditors and contributories at proceedings in Court see Rules 48-50 at p. 864. For the mode of service of notice &c. upon creditors and contributories see Rules 250 and 251 at p. 882.

Injunction.

After the presentation of the winding up petition and before making an order for winding up the Court may, upon application of the company or of any creditor or contributory, restain further proceedings in any suit or proceeding against the company (s. 169).

Provisional liquidator.

At any time after the presentation of a petition and the making of an order for winding up, the Court may appoint a provisional liquidator but shall before making any such appointment give notice to the company [see the amended sub-s. (2) of s. 175]. On hearing the petition of the Court makes an order for winding up the company, it shall, except where a liquidator is appointed simultaneously, forthwith cause intimation thereof to be sent to the official receiver [see the new sub-s. (3) of s. 170]. As to the mode of application for such appointment, form of order &c. see Rules 72-75 at p. 867.

Hearing of the petition.

As to the procedure for hearing the petition see Rules 58-64 at pp. 865-866. On hearing the petition the Court may dismiss it with or without cost, adjourn the hearing, make any interim order or pass order for winding up the company (see s. 170 and notes). As to the form of the order and service and advertisement thereof see pp. 865 and 889. As to the summons for directions to be taken out by official liquidator see Rules 69 & 70 at p. 867.

When an order has been made for winding up a company, the petitioner or his attorney must forthwith file with the registrar of companies a notice and a copy of the order respectively (see the amended s. 172 and Rule 65 at p. 866).

As to the use of any affidavit in any proceeding taken in the winding up after the order see Rule 71 at p. 867.

Such order will be deemed to be notice of discharge to the servants of the company, except when its business in continued [s. 172 (3)].

A winding up order will operate in favour of all creditors and contributories of the company (s. 167).

As soon as a winding up order has been made, the official receiver automatically becomes the official liquidator of the company and will continue to act as such until his further continuance is terminated by an order of the Court [sub-s. (2) of the new s. 171A]. The official receiver shall as such liquidator forthwith take into his custody and control all the books, documents and assets of the company. He will receive such remuneration as the Court will fix [sub-ss. (3) & (4) of s. 171A]. For the meaning of the expression "official receiver" see sub-s (1) of s. 171A.

Transfer of winding up proceedings.

For the provision as to transfer of winding up proceedings from the High Court to a District Court or from one District Court to another District Court see ss. 164 and 165. As to the mode of application for such transfer see Rule 240 at p. 880.

Stay of suits &c. against the company.

Where a winding up order has been made or a provisional liquidator has been appointed, no suit or other legal proceeding against the company can be commenced or proceeded with except by the leave of the winding-up Court. See the amended s. 171 and notes at pp. 435-442. Before the amendment suits or other legal proceedings against the company were not automatically stayed before the winding up order. But now as soon as a provisional liquidator is appointed they are automatically stayed. In this connection see s. 232 where it has been provided that in the case of a winding-up by or subject to the supervision of the Court, any attachment, distress or execution put in force against or any sale held of the properties of the company without leave of the Court after the commencement of the winding up shall be void. But proceedings by the Government are saved.

After an order for winding up a company by or under the supervision of the Court has been passed, all suits and proceedings to which the company is or shall be a party then pending, or thereafter instituted in, or transferred to the High Court will be assigned to the Company Judge (see Rule 241 at pp. 880-881).

Stay of winding up proceedings.

At any time after an order for winding up, on the application of any creditor or contributory, the Court can stay the winding up proceedings altogether or for a limited time on such terms and conditions as the Court thinks fit. See s. 173 and notes at pp. 444-445.

Wishes of creditors and contributories.

In all matters relating to the winding up the Court will have regard to the wishes of the creditors and contributories as proved to it by sufficient evidence ; see s. 174 and notes at pp. 445-446. For this purpose the Court may direct meetings of the creditors or contributories to be called and conducted in such manner as the Court directs, and may appoint a person to act as chairman of the meeting and to report the result to the Court. In the case of creditors regard must be had to the value of each creditor's debt, and in the case of contributories regard is to be had to the number of votes each contributory is entitled to under the articles (see s. 239 and notes).

As to the meetings of creditors and contributories and proxies thereat see Rules 168 to 194 at pp. 875-877, and the forms referred to there.

As to the stamp on a proxy paper at a creditors' or contributories' meetings see App. L, p. 1197.

Official liquidator.

For the provisions for the appointment, resignation, removal &c., of an official liquidator and as to how he should be described see ss. 175 to 177 and notes thereto. As to the procedure for his appointment, security to be furnished by him and his duties see Rule 66 at p. 866 and Rules 76-92 at pp. 867-868. As to his remuneration see Rules 121 and 122 at p. 871. For the provisions for death, resignation &c. of the official liquidator see Rules 116 to 120 at p. 871.

The official liquidator, whether appointed provisionally or not, should take into his custody or under his control, all the property, effects &c., of the company (see the amended s. 178).

For the powers of an official liquidator with the sanction of the Court see ss. 179 and 180, and notes thereto. Subject to the control of the Court he can also exercise and perform the powers and duties of the Court in respect of—(a) holding and conducting meetings to ascertain the wishes of creditors and contributories, (b) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets, (c) requiring delivery of property or documents, (d) making calls, and (e) fixing time within which debts and claims must be proved. But the official liquidator must not, without the special leave of the Court, rectify the register of members or make any call [sub-s. (2) of s. 246]. As to the Rules regarding the official liquidator's duties, investments, books of account and records, statement of affairs, &c. see pp. 867-870. See also the amended s. 182.

The official liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties. But if he is himself an attorney, he cannot appoint his partner at a remuneration (s. 181).

In the administration and distribution of the assets of the company the official liquidator will have regard to any direction that may be given by resolutions of the creditors and contributories or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection. The official liquidator may summon general meetings of creditors or contributories for ascertaining their wishes, but will be *bound* to do so when directed by their resolution or requested in writing by one-third in value of the creditors or contributories (see the amended s. 183). If any person is aggrieved by any act or decision of the official liquidator, he may apply to the Court for redress [s. 183 (5)]. The official liquidator may himself apply to the Court for directions [s. 183 (3)]. But this should be done sparingly.

For the rules relating to debts, claims and proofs see Rules 123 to 137 at pp. 871-872 ; those relating to collection and distribution of assets and preparation of list of contributories see Rules 138-146 at pp. 872-873 ; for making calls and compromise claims see Rules 147 to 154 at pp. 873-874. As to the provision for appeal against the liquidator's decision see s. 183 (5) and Rules 155 and 156 at p. 874. For Rules regarding sales of property and dividends see Rules 158-167 at pp. 874-875.

The Rules relating to the general meetings of creditors and contributories to be called and held by the official liquidator and the proceedings and proxies thereat are to be found in Rules 168 to 194 at pp. 875-877.

The official liquidator must keep proper minute books of his proceedings and any creditor or contributory may, subject to the control of the Court, inspect the same personally or by agent [sub-s. (1) of s. 182].

As to the banking account and investment by the offiicial liquidator see Rules 93-99 at p. 869 and as to his books of account and records see Rules 100-102 at p. 869. As to the disposal of books, papers and documents, during progress of the liquidation, by the official liquidator see rule 120 at p. 871.

New provisions regarding liquidators.

The obligation to furnish information and explanation relating to documents submitted to the registrar as provided in the amended s. 137 applies *mutatis mutandis* to all liquidators also [see sub-s. (7) of s. 137].

The new s. 177B provides that the official liquidator shall, as soon as practicable, submit a preliminary report to the Court as to matters mentioned in clauses (a) to (c) of sub-s. (1) of that section. The official liquidator may also make a further report or reports stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in the promotion or formation, or by any director or other officer of the company since the formation thereof [see sub-s. (2) of s. 177B].

The official liquidator must at least twice in each year present to the Court an account of his receipts and payments in the form prescribed by the High Court [see the new sub-ss. (2) to (4) of s. 182].

Every liquidator of a company which is being wound up by the Court shall in such manner and at such times as may be prescribed by the High court, pay the money received by him into a scheduled bank as defined in clause (e) of s. 2 of the Reserve Bank of India Act, 1934 (for a list of the scheduled banks see pp. 286-287). As to the penalty for retaining by him more than Rs. 500 for more than 10 days see sub-s. (2) of the new s. 244A. Such a liquidator must open a special banking account and pay all sums received by him as liquidator into such account [sub-s. (3) of s. 244A].

Where a company is being wound up (by or under supervision of the Court, or voluntarily) if there are in the hands of the liquidator dividends or assets unclaimed or undistributed for six months, he must forthwith pay the same into the Reserve Bank of India to the credit of the Central Government in the Companies Liquidation Account. For detailed provisions see the new s. 244B introduced by Act XXXVI of 1940. For form of the said Account see p. 609.

Committee of Inspection.

Following ss. 198 and 199 of the English Act of 1929 the Companies (Amendment) Act of 1936 has made provisions for a committee of inspection, both in the winding up by the Court and creditors' voluntary winding up. See ss. 178A and 209C respectively.

By s. 178A it has been provided that the official liquidator must convene separate meetings of the creditors and the contributories for the purpose of determining whether a committee of inspection should be appointed to act with the liquidator and who are to be the members thereof. In the event of a disagreement between the resolution of the two meetings the matter will be decided by the Court [see sub-ss. (1), (2) and (3) of s. 178A]. As to the composition, rights, proceedings &c. of the committee of inspection see sub-ss. (4) to (12) of s. 178A. See also Rules 112-115 at pp. 870-871.

In the administration of the assets of the company and in the distribution thereof among the creditors the official liquidator shall have regard to the directions given by resolutions of the meetings of creditors or contributories, or by the *committee of inspection* and in case of conflict the directions given by the former will prevail [see the amended sub-s. (1) of s. 183].

Statement of affairs to the official liquidator.

A statement of affairs of the company verified by an affidavit and containing the particulars mentioned in clauses (a) to (d) of sub-s. (1) of s. 177A is to be submitted to the official liquidator by persons who are mentioned in sub-s. (2) of s. 177A. This is a very onerous duty cast upon the directors, managers and other officers, past or present, of the company in respect of which an order for winding up has been made, and should be carefully read. For the Rules relating to this matter see Rules 103-108 at pp. 869-870.

Report and further report of official liquidator.

After receipt of the above statement the official liquidator must within the period mentioned in sub-s. (1) of s. 177B submit a preliminary report to the Court as to the matters specified in clauses (a) to (c) of that sub-section. He may also make a further report or reports stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matter which in the liquidator's opinion it is desirable to bring to the notice of the Court (see s. 177B and Rules 109 to 112 at p. 870).

Ordinary and Extraordinary Powers of Court.

As to the ordinary powers of the Court regarding settlement of list of contributories and application of assets of the company, delivery of property, payment of debts by contributories, calls, payment into bank, exclusion of creditors not proving in time, adjustment of rights of contributories, distribution of surplus assets, payment of costs and dissolution of the company see ss. 184 to 194 and notes to those sections.

Private and public examinations.

The Court has power for private examination to summon any officer of the company or any person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person who is deemed capable of giving information concerning the trade, dealings, affairs or property of the company. The Court may also require him to produce any documents in his custody or power relating to the company. If any person so summoned refuses to appear, the Court may cause him to be apprehended and brought before the Court for such examination. See s. 195 and notes at pp. 496-499. The Court can proceed under this section of its own motion.

On *the application* of the official liquidator the Court may direct any person who has taken part in the promotion or formation of the company, or has been a director, manager or other officer of the company, to attend before the Court for *public* examination regarding the promotion, formation or conduct of the business of the company or as to his conduct and dealings as director, manager or other officer of the company. But the official liquidator must state in his application that in his opinion a fraud has been committed by any such person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since its formation. See s. 196 and notes at pp. 500-501. As to the mode of application, who may attend the examination and the proceedings thereof &c. see Rules 195-208 at pp. 877-878.

The Court has the further power to cause an absconding contributory to be arrested and his books, papers and moveable properties to be seized (s. 197).

The above ordinary and extraordinary powers of the Court are in addition to any existing powers of instituting proceedings against any contributory or debtor of the company or his estate for the recovery of any call or other sum (s. 198).

As to the provisions for the liquidator's duty upon termination of winding up proceedings see Rules 235-239 at p. 880.

Enforcement of and Appeal from Orders.

As to the enforcement of the orders of the Court see ss. 199 to 201 and notes, and re-hearings of and appeals from any order or decision in the matter of winding up of a company by the Court see s. 202 and notes at pp. 504-508.

Service of Notice &c.

No service under the Rules made by the High Court will be deemed invalid by reason of any error or omission in names &c. (see Rule 251 at p. 882).

Costs.

For the rules regarding costs see Rules 252 to 255 at p. 882.

Voluntary Winding up.

A company may under s. 203 be wound up voluntarily in the following cases :—

(1) by an *ordinary resolution* of the company requiring it to be wound up voluntarily *when*, (a) the period fixed for the duration of the company expires, or (b) the event occurs on the occurrence of which the articles provide that the company is to be dissolved ;

(2) by a *special resolution* that the company be wound up voluntarily ;

(3) by an *extraordinary resolution* to the effect that the company cannot by reason of its liabilities continue its business and that it is advisable to wind it up.

As to what are *extraordinary* and *special* resolutions and how they are to be passed see the amended s. 81 and notes thereto.

As to the form of notice of a general meeting to pass extraordinary resolution to wind up voluntarily see Form 145 at pp. 1189-1190, and for the form of notice, of a meeting to pass a special resolution to wind up voluntarily see Form 146 at p. 1190.

A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntarily winding up (s. 204). The expression "resolution for voluntarily winding up" means a resolution passed under clauses (1), (2) or (3) of the amended s. 203. From that time the company must cease to carry on its business except so far as may be required for the beneficial winding up of the company. But notwithstanding anything to the contrary in the articles the corporate state and corporate powers of the company will continue until it is dissolved (s. 205).

Within 10 days of the passing of any special or extraordinary resolution for winding up voluntarily the company must advertize the notice of such resolution as provided in s. 206 (1). As to the penalty for default see s. 206 (2). The form of such notice has been given at p. 1190 (Form 147).

New provisions relating to voluntary winding up.

For the original sections 207 to 219, the Companies (Amendment) Act, 1936 has reproduced ss. 230 to 252 and 254 and 255 of the English

Act of 1929 in the new ss. 207 to 218. Two kinds of voluntary winding up have been introduced—(1) a members' voluntary winding up and (2) a creditors' voluntary winding up.

Declaration of solvency.

Where the directors at a meeting held before the date on which the notices of the general meeting at which the resolution for winding up is to be proposed are sent out make a declaration verified by an affidavit to the effect that upon making a full enquiry into the affairs of the company they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 3 years from the date of the passing of the resolution for winding up the company voluntarily, the winding up will be a members' voluntary winding up. The declaration must be supported by a report of the company's auditors and be delivered to the registrar for registration. Where such a declaration is not made, the winding up will be a creditors' voluntary winding up [see the new s. 207]. For the form of declaration of solvency see Rule 248B at p. 881 and Form 69 at p. 916.

Members' voluntary winding up.

The company in general meeting shall appoint one or more liquidators and may fix their remuneration. On the appointment of a liquidator all the powers of the directors shall cease except so far as the company in general meeting or the liquidator sanctions the continuance thereof (s. 208A).

If a vacancy occurs in the office of liquidator the company in general meeting may, subject to any arrangement with the creditors, fill the vacancy (see s. 208B).

As to the power of the liquidator to accept shares &c. in consideration for the whole or part of the business or property of the company and the procedure for completing the transaction see s. 208C.

As to the duty of the liquidator to call a general meeting at the end of each year and of laying before the meeting an account of his acts and dealings and of the conduct of the winding up see sub-s. (1) of s. 208D (see Rule 248 at p. 881). For the consequences of default see sub-s. (2).

As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up and call a general meeting for laying before it the account [sub-s. (1) of s. 208E]. The notice of the meeting should be given in accordance with sub-s. (2).

Within one week after the meeting the liquidator shall send to the registrar a copy of the account and shall make a return to him of the holding of the meeting and in default shall be liable to penalty [see. sub-s (3) of s. 208E and Rule 248A at p. 881].

On the expiration of 3 months from the registration of the return the company will be deemed to be dissolved ; but the Court may on the application of the liquidator or any interested person make an order deferring the date of dissolution [see sub-s. (4) of s. 208E]. The person, on whose application such an order is made, must within 21 days of the order deliver to the registrar a certified copy of the order and in default will be liable to a penalty [see sub-s. (5)].

Creditors' voluntary winding up.

In the case of a creditors' voluntary winding up the company is to cause a meeting of the creditors to be summoned and notices thereof sent and advertized at the time and in the manner mentioned in s. 209A. As to the statement &c. to be laid before the meeting and the procedure there-at see sub-ss. (3) and (4) of s. 209A. For the consequences of contravention of the provisions thereof see sub-s. (6).

As to the meetings of creditors and contributories in relation to creditors' voluntary winding up see rules 218 to 230 at pp. 879-880.

The creditors and the company at their respective meetings mentioned in s. 209A will nominate a person to be liquidator, and if they nominate different persons, the final decision will rest with the Court (s. 209B).

As to the appointment of a committee of inspection and the composition thereof see s. 209C.

The committee of inspection, or if there is no such committee, the creditors may fix the remuneration of the liquidator, and where the remuneration is not so fixed, it will be determined by the Court [sub-s. (1) of s. 209D].

On the appointment of a liquidator all the powers of the directors shall cease, except so far as the committee of inspection or the creditors sanction the continuance thereof [sub-s. (2) of s. 209D].

Any vacancy in the office of a liquidator other than a liquidator appointed by the Court may be filled by the creditors (s. 209E).

The power of liquidator to accept shares &c., in consideration for the whole or a part of the company's business or property mentioned in s. 208C shall not be exercised except with the sanction of the Court or the committee of inspection (s. 209F).

As to the duty of the liquidator to call meetings of the company and of the creditors at the end of each year and of laying before the meeting an account of the dealings and of the conduct of the winding up see s. 209G (see Rule 248 at p. 881). As to the consequences of default see sub-s. (2) thereof.

The provisions for the final meeting and dissolution are similar to those in a members' voluntary winding up mentioned above (see s. 209H and Rule 248A at p. 881).

Provisions applicable to either mode of winding up.

As to the distribution of the company's property see s. 211. For the powers and duties of a liquidator see s. 212.

If from any cause whatever there is no liquidator acting the Court may appoint one. The Court may on cause shown remove a liquidator and appoint another in his place (s. 213).

The liquidator must, within 21 days after his appointment, deliver to the registrar a notice of his appointment [see sub-s. (1) of s. 214]. As to the form of notice see Rule 249 at p. 882 and Forms 67A and 67B at p. 915. For the consequences of default see sub-s. (2) of s. 214.

Any arrangement between a company about to be or in the course of being wound up and its creditors shall, subject to the right of appeal under s. 215, be binding on the company if sanctioned by an extraordinary resolution, and on the company if acceded to by three-fourths in number and value of the creditors [sub-s. (1) of s. 215]. Any creditor or contributory may within 3 weeks from the completion of the arrangement appeal to the Court against it, and the Court may vary or confirm the arrangement [sub-s. (2) of s. 215]. As to the provision relating to appeal under s. 215 see Rule 157 (a) at p. 874.

As to the disposal of unclaimed funds and undistributed assets in the hands of a liquidator in a winding up see the new s. 244B and the Form given at p. 609 and that in a voluntary winding up see Rules 231-234 at p. 880.

Where a company finds it difficult to carry on its business on account of pressure from its creditors it may proceed under s. 153, s. 215, s. 208 C or s. 209F if any satisfactory arrangement is possible.

Power to apply to Court.

The voluntary liquidator or any creditor or contributory of the company has the right to apply to the Court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls or any other matters, all or any of the powers which the Court might exercise in a compulsory winding up (s. 216).

The liquidator or any contributory or creditor may apply for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up, *i. e.*, after the resolution for voluntary winding up is passed. Such application shall be made—(*a*) if the attachment &c. are put into force by a High Court, to such High Court ; (*b*) if the attachment &c. are put into force by any other Court, then to the Court having jurisdiction to wind up the company [see sub-s. (2) of s. 216].

Under the powers conferred by s. 216 the Court can stay suits and proceedings against the company and order delivery of books and examination of persons. In short it will exercise all the powers exercisable in a compulsory winding up if it thinks that such exercise of power will be just and beneficial (see s. 216 and notes at pp. 540-543).

For the mode of application and notice thereof see Rule 157 (b) at p. 874. For the application of the Rules printed in App. F in the case of a voluntary winding up see Rule 256 at p. 882.

Other provisions.

All costs, charges and expenses properly incurred in the voluntary winding up including the liquidator's remuneration are, subject to the rights of the secured creditors, if any, payable out of the assets in priority to all other claims. Next come the debts mentioned in s. 230. See s. 217 and notes at pp. 543-544.

As to the rights of creditors and contributories to have the company wound up by the Court (but the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up) see s. 218 and notes thereto. Where such an order is made by the

Court it may by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding up (s. 220).

Winding up subject to Supervision of Court.

When a company has by *special or extraordinary resolution* [and not under sub-s. (1) of s. 203] resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to the supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just (s. 221). A petition therefor will, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court (s. 222).

When an order for winding up under supervision of the Court has been made, the petitioner or his attorney must forthwith send to the registrar of companies a notice (see Rule 65 at p. 866).

In deciding between a winding up by the Court and that subject to its supervision, and in all matters, the Court may have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence (s. 223).

As to the appointment of a liquidator or an additional liquidator, the removal of a liquidator and the filling of vacancy see ss. 223, 224 and 226.

In a winding up under supervision of the Court the liquidator may, subject to any restrictions imposed by the Court, exercise all its powers, without the sanction or intervention of the Court, as if the company were being wound up altogether voluntarily [s. 225 (1)]. Otherwise and except for the purposes of a public examination under s. 196 order passed under s. 221 will, for all purposes including the staying of suits &c., be deemed to be an order of the Court for winding up the company *by the Court.* See s. 225 (2) and (3).

General Provisions in All Modes of Winding up.

In the case of a winding-up by or subject to the supervision of the Court every disposition of property (including actionable claims) of the company, and every transfer of shares or alteration in the status of the members made after the commencement of the winding up shall, unless the Court otherwise orders, be void. But in the case of a voluntary winding up only the latter, that is, the transfer of shares except with the sanction of the liquidator and every alteration of status of the members shall be void (s. 227). In a winding up all debts and claims, present or future, certain or contingent, will be admissible to proof (see s. 228 and notes). But in the case of an insolvent company the law of insolvency and rules thereunder will apply. See s. 229 and notes at pp. 555-565.

As to the debts which are payable in priority to all other debts see s. 230 and notes at pp. 567-570. By the addition of the new clauses (d), (e) and (f) in sub-s. (1) of s. 230 it has been provided that the compensation payable to an employee of the company under the Workmen's Compensation Act, 1923, sums due to an employee from a provident, pension or gratuity fund &c., and the expenses of any investigation under s. 138 shall also be paid in priority to all other debts. As to fraudulent preference by any transfer, delivery of goods, payment, execution &c. see s. 231 and notes at pp. 573-576.

Where any company is being wound up by or subject to the supervision of the Court any attachment, distress or execution put in force or any sale of properties held without leave of the Court in respect of the estate or effects of the company after the commencement of the winding up will be void. But this will not affect any proceedings by the Government. See the amended s. 232 and notes.

As to the effect of the commencement of winding up of a company upon a floating charge created by it within 3 months see s. 233 and notes.

Reproducing s. 267 of the English Act of 1929 it has been provided in the new s. 230A that the liquidator will be able with the leave of the Court to disclaim any property of the company burdened with onerous covenants notwithstanding that he has endeavoured to sell or has taken possession of the same or exercised any act of ownership in respect thereto. For the detailed provisions read s. 230A. As to the application under this section, its hearing, procedure &c. see Rules 212-217 at pp. 878-879.

Compromise and arrangement.

Subject to the control of the Court the liquidator may, with the sanction of the Court when the company is being wound up by or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case of a voluntary winding up, (i) pay any classes of creditors in full ; (ii) make any compromise or arrangements with the creditors ; and (iii) compromise all calls, liabilities to calls, debts &c. in such terms as may be agreed (see s. 234 and notes at pp. 580-583.

Misfeasance proceedings.

Where in the course of winding up of a company it appears that any promoter or any past or present director, manager, liquidator or officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust, the Court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of the aforesaid persons and compel them to repay or restore the money or property with interest or to contribute such sum by way of compensation as the Court thinks fit. See s. 235 and notes at pp. 584-596.

As to the mode of application, directions for hearing and who may appear in such proceedings see Rules 209-211 at p. 878.

An application for misfeasance is to be made within 3 years from the date of the first appointment of a liquidator, or of the misapplication &c. mentioned in the section, whichever is longer [see the amended sub-s. (1) of s. 235].

Prosecution for falsification of books &c. giving false evidence and other offences.

If any director, manager, officer or contributory of a company which is being wound up, destroys, mutilates, alters or falsifies or fraudulently secretes any books, papers or securities, or makes, or is privy to the making of any false or fraudulent entry in any register, book or document of the company with intent to defraud or deceive any person, he will be liable to inprisonment for a term which may extend to 7 years and will also be liable to fine (s. 236).

Following s. 277 of the English Act of 1929, a new machinery has been provided in the new s. 237 for the prosecution of directors, managers or other officers or members (past or present) of a company, if it appears to the Court in a winding up or to a voluntary liquidator that the aforesaid persons have been guilty of any offence in relation to the company for which they are criminally liable. For details of the procedure see s. 237. As to the mode of application under sub-s. (1) of s. 237 see Rule 244 at p. 881.

For the penalty for giving false evidence in deposition or solemn affirmation &c. see s. 238.

Following s. 271 of the English Act of 1929 a large number of new offences have been created by the new s. 238A and heavy punishments have been provided therefor. If any person being a past or present director, managing agent, manager or other officer of a company which at the time of the commission of the alleged offences is being wound up in any of the modes or is subsequently so wound up does or fails to do any of the acts mentioned in clauses (a) to (p) of sub-s. (1) of s. 238A, he shall be punishable. Where any person pawns or pledges or disposes of any property in circumstances which amount to an offence under cl. (o) of the sub-section referred to above, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned in such circumstances as mentioned in cl. (o) shall be punishable with imprisonment for a term not exceeding 3 years [sub-s (2) of s. 238A]. For details read s. 238A.

Evidence, inspection and disposal of documents.

In a winding up all documents of the company and of the liquidators are *prima facie* evidence between the contributories (s. 240).

After an order for a winding up by or subject to the supervision of the Court, the Court may make orders for inspection by *creditors and contributories* only of the documents of the company (s. 241). As to Rules for inspection of statements filed under s. 177A or s. 244 see Rule 246 at p. 881. As to the disposal of the documents of a company which has been wound up see s. 242. After 3 years from the date of dissolution of a company no responsibility will rest on the company or the liquidator or any person to whom the custody of any document has been committed by reason of the same not being forthcoming [sub-s. (2) of s. 242].

For the power of the Court to declare within 2 years the dissolution of a company to be void see s. 243. The person on whose application such an order is made must within 21 days of the order file with the registrar a certified copy of the order. For the consequence of default see sub-s. (2) of s. 243.

If the winding up of a company is not concluded within one year, the liquidator should file in Court or with the registrar once in each year and at intervals of not more than 12 months a statement in the prescribed form in respect of the proceedings in and position of the liquidation. See the amended s. 244 and Rules 245-247 at p. 881. For the penalty for default see s. 244 (3). The new sub-s. (4) thereof provides that when the statement is filed in Court a copy shall simultaneously be filed with the registrar.

Affidavit.

As to the Court or person before whom an affidavit for the purposes of winding up proceedings may be sworn see s. 245.

As to the saving of winding up already commenced before 15th January, 1937 see the new provisions in s. 284.

Winding up of Unregistered Companies.

An unregistered company may be wound up under the present Act. All the provisions of this Act with respect to winding up will apply to an unregistered company with certain exceptions and additions mentioned in ss. 271 to 276 (see notes to these sections).

For the meaning of the expression "unregistered company" see s. 270 and notes at p. 628. Any partnership, association or company consisting of *more than* 7 members may be wound up under the provisions of Chapter IX.

It has been provided by the new sub-s. (3) of s. 271 that where a company incorporated outside British India ceases to carry on business in British India, it may be wound up as an unregistered company under Part IX, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated (see notes at p. 631).

Banking Companies.

By the Companies (Amendment) Act, 1936 a new Part, namely, Part XA has been introduced making provisions regarding the banking companies.

A banking company has been defined as a company which carries on as its *principal business* the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition, in any one or more of the forms of business mentioned in clauses (1) to (17) of s. 277F.

After the commencement of the aforesaid Act, that is after 15th January, 1937 no company formed for the purpose of carrying on business as a banking company or which uses as part of its name the word "bank", "banker" or "banking" shall be registered unless the memorandum limits the objects of the company to the carrying on the business of a banking company as defined above [see sub-s. (1) of s. 277G].

No banking company whether incorporated in or outside British India shall after two years from 15th January, 1937 carry on any form of business other than those specified in s. 277F [see sub-s. (2) of s. 277G].

No banking company shall after 15th January, 1939 employ or be managed by a managing agent other than a banking company for the management of the company (s. 277H).

No banking company shall, after 15th January, 1937 commence business unless shares have been allotted to an amount sufficient to yield at least Rs. 50,000 as working capital and unless a declaration, verified by an affidavit signed by the directors and the manager, that Rs. 50,000 at least has been received by way of paid up capital, has been filed with the registrar (s. 277-I). For form of this additional declaration see Form XLVI at pp. 856-857.

No banking company shall create any charge upon its unpaid capital, and any such charge will be invalid.

As to the provision for maintaining a reserve fund and the mode of its investment see s. 277K.

Every banking company must maintain, by way of cash reserve, in cash a sum equal to at least 1½ per cent. of its time liabilities and 5 per cent. of its demand liabilities and must *file with the registrar* before the 10th day of every month three copies of a statement of the amount so held on the Friday of each week of the preceding month *with particulars of the time and demand liabilities of each such day* (see s. 277L). But these provisions will not apply to a scheduled bank as defined in cl. (e) of s. 2 of the Reserve Bank Act, 1934 [see sub-s. (3) of s. 277L]. For form of this monthly statement, see Form XLVII at pp. 857-858.

For the consequences of default in complying with the requirements of ss. 277G, 277H, 277J, 277K, 277L and 277M (infra) see sub-s. (4) of s. 277L.

A banking company shall not form any subsidiary company [for definition see sub-s. (2) of s. 2] except a subsidiary company formed for undertaking and executing trusts &c. and such other purposes set forth in s. 277F (see s. 277M). Note the amendment (shown within square brackets) made in s. 277M by the amending Act II of 1938.

As to the power given to the Court for staying suits and proceedings against a banking company which is temporarily unable to meet its obligations, and the procedure for obtaining relief including the interim relief see s. 277N and Rule 242 at p. 881.

Supplemental.

Legal proceedings and offences.

No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class can try any offence against the Act [s. 278 (1)]. All offences against the Act are non-cognizable. As to the power of summary conviction by a Presidency Magistrate see s. 278 (2); and as to the application of the fines under the Act see s. 279.

Power to require security for costs from a limited company.

Where a limited company is plaintiff or petitioner in a suit or other legal proceeding, *any Court having jurisdiction in the matter* may require the company to give security for costs and may stay all proceedings until the security is given. See s. 280 and notes thereto.

Power of Court to grant relief to directors and others.

If in any proceeding against a director, manager, managing agent, auditor or officer of a company in *any* Court for negligence, default, breach of duty or breach of trust, it appears to *such* Court that such a person acted honestly and reasonably, the Court may relieve him wholly or partly. See the new s. 281 and notes. Where such a person has reason to apprehend that any claim will or might be made against him in respect of such negligence &c., he may apply to the Court for relief and the Court, that is, the Court having jurisdiction under s. 3, shall have the same power to relieve him as the Court before whom any such suit or proceeding may be brought [sub-s. (2) of s. 281]. As to the mode of application see Rule 243 at p. 881.

Penalties for false statements and improper use of "Limited."

As to the penalty for wilful false statements in any return, report, certificate, balance sheet or other documents see s. 282 and notes at pp. 653-655; and as to the penalty for improper use of the word "Limited" by any person or persons see s. 283.

Penalty for wrongful withholding of property.

By the new s. 282A severe punishment has been provided for wrongful withholding or misapplication of a company's property by any director, managing agent, manager or other officer or employee of the company and a more severe punishment for failing to deliver up or refund the same within a time to be fixed by the Court trying the offence.

Penalty for misapplication of the employees' securities &c.

All moneys or securities deposited with a company by its employees in pursuance of their contracts of service shall be kept or deposited by the company in a special account in a scheduled bank [sub-s. (1) of s. 282B].

Where a provident fund has been constituted by a company for its employees all moneys contributed to such fund (whether by the company or by the employees) including interest &c. shall, after 15th January, 1937, be invested in securities mentioned or referred to in clauses (a) to (e) of s. 20 of the Indian Trusts Act, 1882. An employee will be entitled on request to see the bank's receipt for any money or security referred to in sub-ss. (1) & (2) of s. 282B. For the consequences of contravention of these provisions see sub-s. (5) of s. 282B.

Table A.

In the case of a company limited by shares, if articles are not registered or if articles are registered, in so far as they do not exclude or modify the regulations in Table A, those regulations shall, so far as applicable, be the regulations of the company (see s. 18).

The Companies (Amendment) Act, 1936 has, by amending sub-s. (2) of s. 17, provided that the articles of a company shall be deemed to contain regulations 56, 66, 71, 78, 79, 80, 81, 82, 95, 97, 105, 107, 112, 113, 114, 115 and 116. Thus these regulations have been made compulsory.

The regulations 78 to 82 both inclusive shall not be deemed to be included in the articles of a private company except one which is the subsidiary company of a public company. Regulation 107 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure, which may in fairness be distributed over several years, only a portion thereof is charged against the income of the year, shall be shown in the profit and loss account, unless the company in general meeting shall determine otherwise [see the proviso to sub-s. (2) of s. 17].

As to other compulsory provisions in the articles of a company see s. 79.

By the Companies (Amendment) Act the following regulations of Table A have been amended, namely, regulations 3, 4, 8, 20, 41, 44, 46, 49, 51, 60, 65, 77, 83, 97 and 107. By the same Act the new regulation 44A has been introduced and the new regulations 103, 104 and 106 have been substituted for the old ones. By the amending Act II of 1938 amendments have been made in regulations 56, 77, 106, 109 and 116. For the amendments and alterations see all these regulations and compare them with the corresponding regulations of Table A of the English Act of 1929.

Stamp.

For the stamp duty on affidavit, agreement, articles of association, share certificate, copy or extract, debenture, bond, conveyance, indemnity bond, allotment letter, memorandum of association, proxy, security bond, share warrants to bearer and transfer of share and debentures see App. L.

Registers and Books.

A list of the registers &c. required to be kept at the registered office of a company has been given in App. J, at p. 1089.

Documents &c. required to be filed with the registrar.

These have been given in App. I at pp. 1087-1088.

Offences under the Act.

A list of offences, offenders and maximum punishments provided in the Act has been given in App. H, at pp. 1080-1086.

These matters have not therefore been dealt with in detail here.

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ABBREVIATION OF REPORTS &c.

A. (preceded by year)—All India Reporter (A. I. R.) Allahabad.
A. C. (preceded by year)—Law Reports, Appeal Cases, House of Lords.
A. & E. or Ad. & El.—Adolphus & Ellis's Reports.
All.—Allahabad Series, I. L. R. Since 1937 preceded by year.
A. L. J.—Allahabad Law Journal.
App. Cas.—Law Reports, Appeal Cases, House of Lords.
Atk.—Atkyns' Reports.
B. (preceded by year)—A. I. R., Bombay.
B. & Ad.—Barnewal and Adolphus' Reports.
B. & C.—Barnewall and Cresswell's Reports.
B. & S.—Best and Smith's Reports.
Beav.—Beavan's Reports.
Bing.—Bingham's Reports.
Bing. N. C.—Bingham's New Cases.
B. L. R.—Bengal Law Reports.
B. L. R. O. C.—Do., Original Civil.
Bom.—Bombay Series, I. L. R. Since 1937 preceded by year.
Bom. H. C. R.—Bombay High Court Reports.
Bom. H. C. R. O. C.—Do. Original Civil.
Bom. L. R.—Bombay Law Reports.
Buckley—Buckle'y Companies Act (Eng.)
Bur. L. J.—Burmah Law Journal.
Bur. L. T.—Burma Law Times.
C. (preceded by year)—A. I. R., Calcutta.
Cal.—Calcutta Series, I. L. R. Since 1937 preceded by year.
Car. & Kir.—Carrington and Kirwan's Reports.
C. B.—Common Bench Reports.
C. B. N. S.—Do. New Series.
Ch. (preceded by year)—Law Reports, Chancery Division.
Ch. App.—Law Reports, Chancery Appeals.
Ch. D.—Law Reports, Chancery Division.
C. L. J.—Calcutta Law Journal.
C. P.—Law Reports, Common Pleas.
C. P. D.—Do. Common Pleas Division.
Cr. L. J.—Criminal Law Journal.
C. W. N.—Calcutta Weekly Notes.
De G. & J.—De Gex and Jones' Reports.
De G. F. & J.—De Gex, Fisher and Jones' Reports.
De G. J. & S.—De Gex, Jones and Smith's Reports.
De G. & Sm.—De Gex and Smale's Reports.
Drew.—Drewry's Reports.
E. & B. or El. & B.—Ellis & Blackburn's Reports.
E. B. & E—Ellis, Blackburn and Ellis's Reports.
Eq.—Law Reports, Equity.
Ex.—Exchequer Courts Reports.
Exch.—Exchequer Reports.
Ex. D.—Law Reports, Exchequer Division.
F. or Fraser—Court of Sessions, Scotland.
Giff.—Giffard's Reports.
Gore-Browne—Sir Francis Gore-Browne's Joint-Stock Companies.
Hals.—Halsbury's Laws of England, Vol. 5, Companies.
H. & M.—Hemming and Miller's Reports.
H. & N.—Hurlstone and Norman's Reports.
H. L.—Law Reports, English and Irish Appeals, House of Lords.
H. L. C.—Clark's Reports, House of Lords.
I. A.—Law Reports, Indian Appeals.
I. C.—Indian Cases.
I. C. L. R.—Irish Common Law Reports.

Ind. Jur. N. S.—Indian Jurist, New Series.
I. R. (preceded by year)—Irish Reports.
I. R. C. P.—Irish Reports, Common Pleas.
Ir. L. R.—Irish Law Reports.
J. P.—Justice of the Peace.
K. & J.—Kay and Johnson's Reports.
Kar. (preceded by year)—I. L. R. Karachi series.
Kay—Kay's Report.
K. B. (preceded by year)—Law Reports, King's Bench Division.
L. (preceded by year)—A I. R. Lahore.
Lah.—Lahore Series, I. L. R. Since 1937 preceded by year.
L. J.—Law Journal (Eng).
L. L. J.—Lahore Law Journal.
L. R. A. Civ.—Law Reporter, Allahabad, Civil.
L. R. C. P —Law Reports, Common Pleas.
L. R. P. C.—Law Reports Privy Council.
L. T.—Law Times Reports (Eng).
Luck.—Lucknow Series, I. L. R.
M. (preceded by year)—A. I. R., Madras.
Mac. & G.—Macnaghten and Gordon's Reports.
Macq.—Macqueen's Scotch Appeals.
Mad.—Madras Series, I. L. R. Since 1937 preceded by year.
Mans.—Manson's Bankruptcy and Company cases.
M. & W.—Meeson and Welby's Reports.
Meg.—Megone's Companies Acts cases.
M. I. A.—Moore's Indian Appeals.
M. L. J.—Madras Law Journal.
M. L. W.—Madras Law Weekly.
M. L. T.—Madras Law Times.
Moo. P. C.—Moore's Privy Council Cases.
M. W. N.—Madras Weekly Notes.
N. (preceded by year)—A. I. R. Nagpur.
Nag. (preceded by year)—Nagpur Series, I. L. R.
N. I.—North Ireland Reports.
O. (preceded by year) A. I. R., Oudh.
O. L. R.—Oudh Law Reports.
O.W. N.—Oudh Weekly Notes.
P. (preceded by year)—A. I. R. Patna.
Pat.—Patna Series, I. L. R.
Pat. L. J.—Patna Law Journal.
P. C. (preceded by year)—A. I. R., Privy Council.
Pesh. (preceded by year)—A. I. R., Peshwar.
Ph.—Phillip's Reports.
P. L. R.—Punjab Law Reporter.
P. R.—Punjab Records.
P. W. R.—Punjab Weekly Reporter.
Q. B. (preceded by year)—Law Reports, Queen's Bench Division.
Q. B.—Queen's Bench Reports.
Q. B. D.—Queen's Bench Division.
R. (preceded by year)—A. I. R., Rangoon.
Rang.—Rangoon Series, I. L. R. Since 1937 preceded by year.
Ry. Can. Cas.—Railway and Canal Cases.
S. (preceded by year)—A. I. R., Sind.
S. C. (preceded by year)—Court of Sessions Cases, Scotland.
Sc. L. R.—Scottish Law Reports.
S. J. or Sol. Jo.—Solicitors' Journal.
Sm. L. C.—Smith's Leading Cases.
T. L. R.—The Times Law Reports.
T. R.—Term Reports.
Ves.—Vesey Junior's Reports.
W. N. (preceded by year)—Weekly Notes (Eng.)
W. R.—Weekly Reporter (Sutherland).
W. R. (Eng.)—Weekly Reporter (English).

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ACT NO. VII OF 1913.

[PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.]

(Received the assent of the Governor-General on 27th March, 1913).

An Act to consolidate and amend the law relating to Trading Companies and other Associations.

For statement of Objects and Reasons, see Gazette of India, 1912, Pt. V, p. 151; for Report of the Select Committee, see *ibid*, 1913, Pt. V, p. 45; and for Proceedings in Council, see *ibid*, 1912, Pt. VI, p. 586, and *ibid*, 1913, Pt. VI, pp. 106 and 300.

History of company law in England.

In England the formation of joint-stock companies for trading and other purposes dates back several centuries[1]. The East India Company was formed in 1600 in the reign of Queen Elizabeth, but up to 1844 companies were incorporated either by Royal Charter or by special Acts of Parliament, and the privilege of limited liability was not granted till 1855. In 1856 a codifying law was passed followed by an amending Act in 1857. The law was again codified in 1862. This was a comprehensive Act and a large number of important decisions in English Courts were passed under this Act. Between that year and 1908 several amending Acts were passed. They were consolidated by the Companies (Consolidation) Act, 1908 which will be referred to in the following pages as the English Act of 1908. The last English Act (19 & 20 Geo. 5, c. 23) was passed in 1929 which consolidated all the amending Acts passed between 1908 and 1928. This Act came into operation on the 1st of November, 1929.

History of company law in India.

In India following the English Companies Act of 1844 (7 and 8 Vict. c. 110) an Act for "Registration of Joint-Stock Companies" was, for the first time, enacted in the year 1850[2]. Every unincorporated company of partners associated under a deed containing a provision that the shares in the stock or business of the said company were transferable without the consent of all the partners, and also every company established for some literary, scientific or charitable purpose, which did not carry on any business for the pecuniary benefit of any of the proprietors or shareholders, were entitled to registration under this Act. The Supreme Courts of Calcutta, Madras and Bombay were authorized to order such registration.

Salient features of earliest company legislation.

Although in this Act the privilege of limited liability was not conferred on the members, several important provisions relating to the management of joint-stock companies were, for the first time, enacted: *i. e.*, provisions relating to—holding of one or more general meetings every year; holding of extraordinary general meetings upon the requisition of seven or more members; prohibition as to purchase by the company of its own shares or grant of loan to any person on the securiry of such shares; prohibition of and restriction to granting loans to the directors and officers of the company or their becoming security or guarantee for any loan; half-yearly audit and report by auditors on balance-sheet and profit and loss account. There were provisions regarding transfer of shares. Trusts were not recognized. Suits by or against a company registered under the Act[1] were allowed to be instituted in its registered name. The company was permitted to sue, and be sued by, its shareholders and thus its distinct entity was recognized. Unpaid capital was a debt to the company. In the case of insolvent companies there were provisions like the winding up proceedings, and the directors might be examined on oath as provided in the present Act. Reteable contributions were to be realized from the shareholders for payment of the company's debts. Liability of past members was indicated; and finally, the company was to be dissolved. Thus the Act of 1850[1] may be said to be the nucleus about which subsequent Companies Acts developed, though strictly speaking they were all enacted on the lines of English Companies Acts.

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[1] Gore-Browne, 36th ed. p. I.

[2] Act XLIII of 1850.

Indian Acts between 1857 and 1913.

In 1857 an "Act[2] for the incorporation and regulation of Joint-Stock Companies and other Associations either with or without limited liability of the members thereof" was passed; but under this Act the privilege of limited liability was not extended to any company formed for the purpose of banking or insurance[3]. This disability was removed by Act VII of 1860 passed on the lines of the English Act of 1857. Then following the English Act of 1862 a comprehensive Act[4] was passed in India in 1866 for consolidating and amending "the laws relating to the incorporation, regulation and winding up of Trading Companies and other Associations." This Act was recast in 1882[5] embodying the amendments that were made in the company law in England up to that time.

Between the years 1882 and 1913 the following amending Acts were passed in India.

Act VI of 1887—providing for priority of debts in the winding up of a company.

Act XII of 1891—making some verbal corrections and introducing the word "hundi" after the word 'bill' in s. 144 cl. (f) of Act VI of 1882.

Act XII of 1895—giving power to companies to alter their objects or forms of constitution subject to confirmation by the High Court.

Act IV of 1900—authorizing certain companies to keep branch register of members in the United Kingdom.

Act IV of 1910—authorizing payment of interest out of capital and re-issue of redeemed debentures.

Act VII of 1913.

Then following the English Companies (Consolidation) Act, 1908 the present Companies Act[6], was passed in India in 1913 which is, as were the previous Acts, almost a *verbatim* reproduction of the English Act[7]. Some minor amendments[8] were later on effected to the Indian Act which will be mentioned in their proper places.

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[1] Act XLIII of 1850.

[2] Act XIX of 1857.

[3] Ibid, s. I (proviso).

[4] Act X of 1866.

[5] Act VI of 1882.

[6] Act VII 1913.

[7] In re Mirza Ahmad [1924] M. W. N. 582, 83 I. C. 94.

[8] Acts X & XI of 1914, Act XI of 1915, Acts XLII & XLVII of 1920, Act XXXIII of 1926, Act XIX of 1930 and Act I of 1932.

Act XXII of 1936.

The most extensive amendments, chiefly on the lines of the new provisions introduced in the English Companies Act of 1929, have been made by the Indian Companies (Amendment) Act, 1936 which received the assent of the Governor-General on 27th October, 1936 and came into operation on 15th January, 1937 (*vide* Gazette of India dated 28th November, 1936, Part I, p. 1492). The provisions of this amending Act have been incorporated in this work and have been shown in *italics*.

Preamble.

In the preamble of Act VI of 1882 after the words "law relating to" there occurred the words "the incorporation, regulation and winding up of" which have been omitted in the present Act. In the English Act there is no such preamble. No doubt a preamble can be looked at when the section is ambiguous and it supplies a key to the mind of the legislature and indicates what its intention was, but where the language of the section is clear, a preamble cannot control its provisions [1]. A preamble cannot be taken to have cut down the express provisions of a statute [2].

It is not open to the Courts to question the right of the legislature to go beyond what was stated in the preamble as the reason for the legislation, for the legislature may very well have done actually a little more than what it started to do [3].

Construction of a consolidating Act.

A consolidating Act should be construed, not with reference to the circumstances existing at the time of the preceding Acts, but in relation to those existing at the time of the consolidating Act. The first step taken should be to interpret the language of the statute, and an appeal to earlier decisions can only be justified on some special ground [4]. Lord Halsbury (Lord Chancellor) observed : "It seems to me that, construing the statute by adding to it words which are neither found therein nor for which authority could be found in the language of the statute itself, is to sin against one of the most familiar rules of construction, and I am wholly unable to adopt the view that where a statute is expressly said to codify the law, you are at liberty to go outside the code so created, because before the existence of that code another law prevailed" [5]. "The question is not what may be supposed to have been intended, but what has been said" [6].

Reference to previous legislation.

The positive enactment in a statute cannot be qualified or neutralized by indications of intention gathered from previous legislations upon the same subject [7]. Their Lordships of the Judicial Committee observed: "The respondent maintained this singular proposition that in dealing with a consolidating statute, each enactment must be traced to its original source and, when that is discovered, must be construed according to the state of circumstances which existed when it first became law. The proposition has neither law nor reason to recommend it. The very object of consolidation is to collect the statutory law bearing upon a particular subject and to bring it down to date in order that it may form a useful code applicable to the circumstances existing at the time when the consolidating

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[1] Mt. Rajpali v. Suraj [1936] A. 507 F. B. at p. 511, [1936] A. L. J. 659.
[2] Sutton v. Sutton [1882] 22 Ch. D. 511 at p. 520 ; Debi Das v. Maharaj Rup Chand [1927] A, 593 (596), 49 All. 903, 25 A. L. J. 609, 102 I. C. 792.
[3] Pamidi v. Junus [1936] M. 844 (848), 44 M. L. W. 554.
[4] Bank of England v. Vagliano [1891] A.C. 107.
[5] Ibid at p. 120.
[6] Brophy v. Attorney General of Manitoba [1895] A. C. 202 P. C. at p. 216.
[7] Administrator General v. Premlal [1895] 22 Cal. 788 P. C. at p. 797.

Act is passed"[1]. In a subsequent case [2] their Lordships indicated a modification of this principle in the following words: "It is a sound rule of interpretation to take the words of a statute as they stand and to interpret them ordinarily without any reference to the previous state of the law on the subject or the English law upon which it may be founded; but when it is contended that the legislature intended by any particular amendment to make substantial changes in the pre-existing law, it is impossible to arrive at a conclusion without considering what the law was previously to the particular enactment and to see whether the words used in the statute can be taken to effect the change that is suggested as intended."

Reference to proceedings of the legislature.

The practice of referring to the proceedings of the legislature has been disapproved in the following passage [3]: "Their Lordships observed that the learned Judges who constituted the majority in the appellate Court, although they do not base their judgment upon them, refer to the proceedings of the legislature.........Their Lordships think it right to express their dissent from that proposition. The same reasons which exclude these considerations when the clauses of an Act of the British legislature are under construction, are equally cogent in the case of an Indian statute." Reference to the report of the select committee and proceedings in the legislature is not permissible in aid of the interpretation of a statutory provision [4].

Reference to reports of Indian Law Commissioners.

A reference to the reports of the Indian Law Commissioners have, however, been held to be permissible, though reference to proceedings of the Legislative Council, report of the select committee thereof, draft stages of a bill and statements of objects and reasons are not permissible [5].

Statement of objects and reasons.

The statement of objects and reasons is not part of an Act, and is not to be referred to by the Courts in its interpretation. What the Courts have to interpret is the Act as it has finally emerged from the legislature. What the authors of the bill hoped that the Act might achieve is a different matter [6].

Decisions passed under previous Acts.

When a clause in an Act has received a judicial interpretation and is re-enacted in the same terms, the legislature is deemed to have adopted that interpretation [7]. In this view the decisions passed under the previous Companies Acts, especially under Act VI of 1882, Act X of 1866 and the English Act of 1862 are still valuable so far as the same language has been repeated in the present Act [8]. The Court, however, is not bound to adopt a constructiom erroneously placed on the former Acts [9]. But the application of a decision may be

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1. Ibid at p. 798.
2. Abdur Rahim v. Abu Mahomed [1928] P. C. 16 (18), 55 Cal. 403, 55 I. A. 96, 32 C. W. N. 621, 47 C. L. J. 150.
3. Administrator General v. Premlal (supra) at p. 799.
4. Dinanath v. Sati Prasad [1922] 27 C. W. N. 115; Sarat Sundari v. Uma Prasad [1904] 8 C. W. N. 578; Queen-Empress v. Tilak [1897] 22 Bom. 112 (127).
5. Woodroffe's Civil Procedure Code, 2nd ed. p. 7.
6. Parsram v. Tarachand [1936] S. 209 (210).
7. Exparte Campbell [1870] 5 Ch. App. 703; Avery v. Wood [1891] 3 Ch. 115; R. v. Abraham (infra).
8. See Mersey Docks case [1865] 11 H. L. C. 443; see also Thames Conservators v. Smeed, Dean & Co. [1897] 2 Q. B. 334 C. A.; R. v. Abraham [1904] 2 K. B. 859.
9. Colonial Bank v. Whinney [1885] 30 Ch. D. 261, 11 App. Cas. 426.

excluded by a change in the language of the new Act 1. The Companies Act should be construed fairly and not narrowly 2.

Amending Act—interpretation.

On account of the extensive amendments made by the Companies (Amendment) Act, 1936, it is necessary to consider the effect of the amendments on the existing rights and obligations of companies as well as other persons. In general it may be said that repeal or amendment of an Act does not affect a right already in existence, unless a contrary intention is made out expressly or by implication 3. "The application of an Act is when the parties begin to move under it" 4.

Retrospective operation.

"Unless there be something", said Lord Cranworth, "in the language, context or objects of an Act of Parliament showing contrary intentions, the duty and practice of Courts of Justice is to presume, in conformity with the adage of Lord Coke, that the legislature enacts prospectively and not retrospectively" 5. "No rule of construction is more firmly established than this: that a retrospective operation is not to be given to a statute so far as to impair an existing right or obligation otherwise than as regards procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospectively only" 6. It would be most dangerous construction to give a retrospective effect to a statute by implication 7. A statute is not to be construed to have a greater retrospective operation than its language render necessary 8. "When you are construing an Act which makes changes in the law....you will not construe the words, unless they are clearly to that effect, so as to upset vested rights and liabilities which have been complete in themselves" 9.

No doubt the general principle is that Acts of the legislature are not given retrospective effect, unless the language makes it clear that such was the intention ; but in applying that principle one must have regard to the general character of the Act in question, and when construing an Act introduced for the purpose of applying an equitable doctrine to certain transactions considered *ex hypothesi* to be lacking in equity, one should not assume that the legislature intended that the Act should not have retrospective effect, but wished to reserve rights acquired in such transactions 10.

But as regards procedure, no person has a vested right in any course of procedure 11. The general principle is that alteration in procedure is always retrospective, unless

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1. Thomas v. United Butter Co. [1909] 2 Ch. 484.
2. Government Stock Investment Co. [1891] 1 Ch. 649 at p. 655.
3. Choudhury Gursaran v. Akhouri [1927] P. 203 (205), 6 Pat. 296, 104 I. C. 580 ; Achanta v. Gunisetti [1937] M. 92, 170 I. C. 649.
4. Keshoram v. Nundolal [1927] P. C. 97 (98), 54 I. A. 152, 54 Cal. 508, 31 C. W. N. 646, 46 C. L. J. 341.
5. Kerr v. Ailsa [1854] 1 Macq. 736 (737).
6. Per Wright J. in re Athlumney [1898] 2 Q. B. at pp. 551-52 ; see also Munjhoori v. Akel [1913] 17 C. L. J. 316 ; Budhu v. Hafiz [1913] 18 C. L. J. 274 ; Promotha v. Mohini [1920] 47 Cal. 1108, 24 C. W. N. 1011 ; Gopeshwar v. Jiban [1914] 41 Cal. 1125 ; Javan Mal v. Mukta Bibi [1890] 14 Bom. 516 ; Thompson v. Lack [1846] 3 C. B. 540 (551) ; In re Parish of Pullborough [1894] 1 Q. B. 725 : Md. Abdus Samad v. Kurban [1903] 31 I. A. 30, 29 All. 118, 8 C. W. N. 201.
7. Per Pollock, C. B. in Young v. Hughes [1859] 28 L. J. Ex. 161 (164).
8. Lauri v. Renad [1892] 3 Ch. 421—per Lindley, L. J. ; Munjhoori v. Akel (supra); Budhu v. Hafiz (supra) ; Secretary of State v. Bank of India [1938] P. C. 191, [1938] Bom. 502, 42 C. W. N. 957.
9. Clements v. D. Davis & Sons, Ltd. [1927] A. C. 126, per Lord Dunedin at p. 131.
10. Rustomji v. Bai Moti [1940] B. 90, [1940] Bom. 50, 41 Bom. L. R. 1310—per Beaumont, C. J.
11. Per Mellish, L. J. in Costa Rica v. Erlanger [1876] 3 Ch. D. 69.

there be some good reason against it [1]. "The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in *Colonial Sugar Refining Co. v. Irving* [2], where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment" [3].

Even where a section finds a place in a procedure code, but imposes in essence a serious restriction upon the title of a person, retrospective effect will not be given to its words [4].

Pending action.

In general when the law is altered during pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights [5].

Right of appeal.

So far as the right of appeal is concerned alteration of a statute does not either give it or take it away. Where a right of appeal to the Privy Council was given by an amending Act, their Lordships of the Judicial Committee held that the amending Act had no retrospective operation: "Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders, which, when the statute came into force, were final, are provisions which touch existing rights" [6]. On the other hand in *Colonial Sugar Refining Co. v. Irving* [7] their Lordships said: "To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."

General rule of construction.

In determining either the general object of the legislature or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles would, in all cases of doubtful significance, be presumed to be the true one [8]. If there is ambiguity as to the meaning of a disabling section, e. g., provisions for registration of business names, the construction which is in favour of the freedom of the individual should be given effect to [9]. A meaning

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1. Per Lord Blackburn in Gardner v. Lucas [1878] 3 App. Cas. 603.
2. [1905] A. C. 369 P. C., 92 L. T. 738.
3. Delhi Cloth & General Mills v. Income Tax Commissioner [1927] P. C. 242, 54 I. A. 421, 32 C. W. N. 237.
4. Promotha v. Mohini (supra); Phoenix Bessemer Co. [1875] 45 L. J. Ch. 11.
5. Thistleton v. Frewer [1861] 31 L. J. Ex. 230; Young v. Hughes (supra); Sheopujan v. Bishnath [1930] A. 706, 52 All. 886, 128 I. C. 390; Shiya Janki v. Kirtanand [1936] P. 173, 160 I. C. 606; Joseph Suche & Co. [1876] 1 Ch. D. 48, 38 L. T. 774.
6. Delhi Cloth & General Mills Co. v. Income Tax Commissioner (supra) [1927] P. C. at p. 244.
7. [1905] A. C. 369 P. C. at pp. 372-73; see also Sheopujan v. Bishnath (supra); Ram Singh v. Sankar Dayal [1928] A. 437 F. B., 50 All. 905, 11 I. C. 6.
8. Maxwell on Statutes 7th ed. p. 166 quoted with approval in Maikoo Lal v. Santoo]1936] A. 37 F. B., 162 I. C. 954.
9. David v. D' Silva [1934] P. C. 36 (40), 148 I. C. 607.

cannot be attributed to a section based on the reading of a repealed section. The section must be interpreted as it stands on the relevant date 1. Where an Act does not expressly purport to supersede an earlier one, it should be interpreted so as to avoid conflict with the latter if possible 2. "The court cannot", observed their Lordships of the Judicial Committee, "put into the Act words which are not expressed, and which cannot reasonably be implied on any recognized principles of construction. That would be a work of legislature, not of construction, and outside the province of the Court" 3.

"The golden rule is", observed Lord Simon L. C., "that the words of a statute must *prima facie* be given their ordinary meaning. We must not shrink from an interpretation which will reverse the previous law, for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or, conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinion of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words, the meaning of which is not entirely plain, there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result" 4.

"One of those presumptions is, that the Legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits, the law remains undisturbed. It is in the last degree improbable that the Legislature would overthrow fundamental principles, infringing rights, or depart from the general system of law, without expressing its intention with irresistible clearness, and to give any such effect to general words, simply because they have a meaning that would lead thereto when used in their widest, their usual or their natural sense, would be to give them a meaning other than that which was actually intended. General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must usually be construed as being limited to the actual objects of the Act. The general words of the Act are not to be so construed as to alter the previous policy of the law" 5.

"Decisions under other statutes," observe their Lordships of the Judicial Committee, "have been cited. But it is always dangerous to seek to construe one statute by reference to the words of another" 6.

If a new enactment is such that certain new rights unknown previously to law are created by the new statute and certain remedies are provided for the infringement of such

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1. Venkata Subamma v. Ramayya [1932] P. C. 92 (94), 59 I. A. 112, 55 Mad. 443, 36. C. W. N. 441.
2. Rangacharya v. Dasacharya [1913] 37 Bom. 231.
3. Kamalaranjan v. Secretary of State [1938] P. C. 281, 43 C. W. N. 113.
4. Nokes v. Doncaster Amalgamated Collieries [1940] A. C. 1014 at p. 1022.
5. Maxwell on Statutes, 8th ed. p. 73 quoted with approval by Lord Atkin in Nokes v. Doncaster Amalgamated Collieries, supra at pp. 1031-1032.
6. Nippon Yusen Kaisha v. Ramjiban [1938] P. C. 152, [1938] 2 Cal. 381, 42 C. W. N. 677, 65 I. A. 263.

rights, it must logically follow that it was the clear intention of the legislature that such remedies should be enforced only in the manner and by following the procedure indicated. But the Indian Companies Act must be regarded as an Act merely legislating for or regulating certain rights recognized under the Common Law of England 1.

Reference to English decisions.

In considering the construction of a section in an Indian Act which is professedly based on an English enactment and which it reproduces, almost word for word, the language of the English enactment, and which relates to a branch of the law which is entirely English law, the Courts of India are in practice, if not in theory, bound by the decisions of the English Court of Appeal 2.

Where the language of the sections of the English and the Indian Acts are identical, Indian Courts would very much hesitate to depart from the view expressed by eminent Judges in England who have had great experience of company law, unless there is something internal in the section itself which would justify its interpretation in a different way 3. But because a section of an Indian Act is copied from an English Act, it should not be interpreted contrary to the statute law of India as contained in another Act, *e. g.*, the Provincial Insolvency Act 4. Now that the Indian legislature is gradually evolving an independent system of its own, even in respect of the company law, as is evidenced by the Companies (Amendment) Act, 1936, the following caution of their Lordships of the Judicial Committee should be borne in mind in interpreting the company law: "It has often been pointed out by this Board that where there is a positive enactment of the Indian legislature, the proper course is to examine the language of that statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law—or of the English law upon which it may have been founded" 5.

Whereas it is expedient to consolidate and amend the law relating to Trading Companies and other Associations; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, commencement and extent.

1. (1) This Act may be called the Indian Companies Act, 1913.

(2) It shall come into force on the first day of April 1914; and

(3) It extends to the whole of British India including British Baluchistan and the Santhal Parganas.

Headings.

Headings prefixed to sections are considered as preambles to those sections. They constitute an important part of the Act itself and afford a better key to the construction of sections which follow them than preambles to the Act 6.

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1. Mohedeen v. Tinnevelly Mills Co. [1928] M. 571, [1928] M. W. N. 442, 111 I. C. 225.
2. Lovelock & Lewes v. Malabar T. & S. Mills [1915] 13 M. L. T. 282, 18 I. C. 997. See also Piara Singh v. Peshwar Bank [1915] 28 I. C. 53.
3. Alliance Bank of Simla v. Feroz Shah [1936] Pesh. 57, 160 I. C. 908.
4. Shiam Lal v. U. P. Oil Mills [1933] A. 789, [1933] A. L. J. 1203 F. B.
5. Ramanandi v. Kalawati [1928] P.C. 2 (4), 55 I. A. 18, 7 Pat. 221. 32 C.W.N. 402.
6. Eastern Counties &c. Ry. Co. v. Marriage [1860] 9 H. L. C. 32 at p. 41; Dwarkanath v. Tafezur [1917] 44 Cal. 267, per Woodroffe J.

"These various headings," observed Baron Channell, "are not to be treated as if they were marginal notes, or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself. They may be read, I think, not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to to explain the enactments, but as affording, as it appears to me, a better key to the constructions of the sections which follow them than might be afforded by a mere preamble" 1.

"It is now settled law that headings prefixed to the bill passed by the legislature have the force of words used in the preamble of an act and may be used as 'a key to open the minds of the makers of the Act,' and in this respect are unlike marginal headings which have no force for the purpose of interpretation" 2. A heading to a group of sections cannot, however, be pressed into a constructive limitation upon the exercise of powers given by the express words of the Act 3.

Marginal notes.

Marginal notes are no part of the sections. They are merely abstracts of the clauses intended to catch the eye and to make the task of reference easier and more expeditious 4. In *Balraj* v. *Jagat Pal* 5 their Lordships of the Judicial Committee laid down the law in the following words: "It is well settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act." The contrary opinion originated in a mistake and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian statute any greater authority than the marginal notes in an English Act of Parliament 5.

Punctuation.

"Their Lordships think," observed the Judicial Committee, "that it is an error to rely on punctuation in construing Acts of the legislature" 6. "The soundness of this principle", said Strachey, C. J., "is well illustrated in the present instance by the fact that in the original edition of the Indian Divorce Act there is not a colon at the end of the fourth paragraph of S. 17, but a full stop" 7. Scott, C. J., in the undermentioned case 8, distinguished the above decision on the ground that an old Regulation of Bengal was under the consideration of the Judicial Committee in the above Privy Council decision and that their Lordships' opinion was not applicable to Acts of the regular legislatures since established. The decision of Scott. C. J., however, appears to be wrong as the Privy Council have recently re-iterated their opinion that a Court of law is bound to read a section without the commas inserted in the print 9.

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1. Eastern Counties &c. Ry. Co. v. Marriage [1860] 9 H. L. C. 32 at p. 41.
2. Debi Das v. Maharaj Rup Chand [1927] A. 593 (596), 49 All. 903, 25 A. L. J. 609, 102 I. C. 792; Baldeo v. Kashi [1926] A. 312 (316), 24 A. L. J. 337, 92, I. C. 995 [in this case :—"It is at least open to question whether the words themselves have any operative effect"]; Narayanaswami v. Rangaswami [1926] M. 749 (751), 49 Mad. 716, 95 I. C, 731 ; but see Chuni Lal v. Sheo Charan [1925] A. 787 (789), 47 All. 756 where Sulaiman & Boys JJ. held that the headings were to be ignored, no authority however was cited for this.
3. Abdul v. Municipal Commissioners [1918] 42 Bom. 462 (472).
4. Sutton v. Sutton [1882] 22 Ch. D. 511 ; Punardeo v. Ramsarup [1898] 25 Cal. 858 ; Dukhi v. Halway [1896] 23 Cal. 55.
5. [1908] 26 All 393 (406), 31 I. A. 132, 8 C. W. N. 699 followed in Kesava Chetty v. Secretary of State [1918] 42 Mad. 451.
6. Maharani of Burdwan v. Krishna Kumari [1886] 14 Cal. 365 (372) P. C.
7. Caston v. Caston [1899] 22 All. 270 (276-77).
8. Taylor v. Bleach [1914] 39 Bom. 182 (190) ; see also Secretary of State v. Rujluckee [1887] 25 Cal. 239 (242) and A (wife) v. B (husband) [1898] 23 Bom. 460.
9. **Pugh v. Ashutosh [1929] P. C. 69 (71), 8 Pat. 516, 56 I. A. 93, 38 C. W. N. 323.**

Illustration. An illustration to a section cannot have the effect of modifying the language of the section which alone forms the enactment [1].

Sub-s. 3. The Act (of its own force) does not apply to a Native State [2].

"British India." "British India" has been defined in cl. (7) of s. 3 of the General Causes Act X of 1897 as amended by the Government of India (Adaptation of Indian Laws) Order, 1937 as follows: " 'British India' shall mean, as respects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty's dominions which were for the time being governed by His Majesty through the Governor General of India or through any Governor or officer subordinate to the Governor General of India, and as respects any period after that date means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, except that a reference to British India in an Indian law passed or made before the commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar."

Definitions. 2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(1) "articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the Schedule annexed to Act No. XIX of 1857 or in Table A in the First Schedule annexed to the Indian Companies Act, 1882, or in Table A in the First Schedule annexed to this Act:

(2) "company" means a company formed and registered under this Act or an existing company:

(3) "the Court" means the Court having jurisdiction under this Act:

(4) "debenture" includes debenture stock:

(5) "director" includes any person occupying the position of a director by whatever name called:

(6) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction:

(7) "existing company" means a company formed and registered under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882:

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1. B. N. Ry. Co. v. Ruttanji [1938] P C. 67, [1938] 2 Cal. 72, 42 C. W. N. 985.
2. Appa Dada v. Ramkrishna [1930] B. 5, 53 Bom. 652, 31 Bom. L. R. 1187.

(8) "Insurance company" means a company that carries on the business of insurance either solely or in common with any other business or businesses :

(9) *'manager' means a person who subject to the control and direction of the directors has the management of the whole affairs of a company, and includes a director or any other person occupying the position of a manager by whatever name called and whether under a contract of service or not :*

(9A) *'managing agent' means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement and includes any person, firm or company occupying such position by whatever name called :*

Explanation.—If a person occupying the position of a managing agent calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purposes of this Act.

(10) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of the Act :

(11) "officer" includes any director, *managing agent*, manager, or secretary but, save in sections 235, 236, and 237, does not include an auditor :

(12) "prescribed" means as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and, as respects the other provisions of this Act, prescribed by the Governor General in Council :

(13) *"private company" means a company which by its articles—*

(a) *restricts the right to transfer its shares, if any ; and*

(b) *limits the number of its members to fifty not including persons who are in the employment of the company ; and*

(c) *prohibits any invitation to the public to subscribe for the shares, if any, or debentures of the company :*

***Provided** that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be treated as a single member :*

(13A) *"public company" means a company incorporated under this Act or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, which is not a private company :*

(14) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company *but shall not include any trade advertisement which shows on the face of it that a formal prospectus has been prepared and filed :*

(15) "the registrar" means a registrar or assistant registrar performing under this Act the duty of registration of companies : and

(16) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.

[(17) *"trading corporation" means a trading corporation within the meaning of Item 33 in List 1 in the Seventh Schedule to the Government of India Act, 1935*].

(2) *Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and*

(*a*) *the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent. of the issued share capital of that other company or such as to entitle the company to more than fifty per cent. of the voting power in that other company, or*

(*b*) *the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,*

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression 'subsidiary company' in this Act means a company in the case of which the conditions of this sub-section are satisfied and includes a subsidiary company of such company :

Provided that where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall, for the purpose of determining under this section whether that other company is a subsidiary company, be taken of the shares so held.

In s. 3, Act VI of 1882, which is replaced by the present section, only the words 'Court," "District Court" and "Insurance Company" were defined.

Amendment.

In this section the following amendments have been made by the Indian Companies (Amendment) Act No. XXII of 1936 : In sub-s. (1) the new cl. (9) has been substituted for the original cl. (9) thus altering the definition of "manager"; (ii) by the new clause (9A) a definition of "managing agent" has been inserted; (iii) in cl. (11) the words "managing agent" have been put in after the word "director"; (iv) the new cl. (13) has been substituted for the old cl. (13) thus altering the definition of "private company"; (v) a new cl. (13A) has been inserted defining "public company"; (vi) the words in italics have been added to the definition of "prospectus" in cl. (14); and the new sub-section (2) has been added defining "subsidiary company." See notes under the respective headings.

In sub-s. (1) the new cl. (17) has been inserted by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

Effect of interpretation clause.

Where a term has been defined in a statute, it must be given that meaning throughout the statute, unless some provision makes it clear that for certain purpose the term must be given another meaning 1. The word "include" in the interpretation clause is intended to be enumerative and not exhaustive. It has an extending force and does not limit the meaning of the term to the substance of the definition. When it is intended to exhaust the signification of the word interpreted, the word "means" is used 2.

"In coming to a determination", observed their Lordships of the Privy Council, "as to the meaning of a particular word in a particular Act of Parliament it is permissible to consider two points, *viz.*, (i) the external evidence derived from extraneous circumstances such as previous legislation and decided cases; (ii) internal evidence derived from the Act itself......As was said by the Lord Chancellor in *Brophy v. A. G. of Manitoba* 3, the question is not what may be supposed to have been intended but what has been said" 4.

"It is a sound rule of construction", said Cleasby, B., "to give the same meaning to the same words occurring in different parts of an Act of Parliament" 5. "We disclaim altogether", observed Lord Denman, "the assumption of any right to assign different meanings to the same words in an Act of Parliament on the ground of a supposed general intention" 6.

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1. Parshottam v. Official Liquidator [1938] A. 613, I.L.R. [1938] All. 957. See also National Savings Bank Assn. [1866] 1 Ch. App. 547; Anglsea Colliery Co. [1866] 1 Ch. App. 555; Imperial Oil &c. Co. v. Ramchand [1916] 36 I. C. 980.
2. Strauss & Co. [1937] B. 15, 38 Bom. L. R. 1080.
3. [1895] A. C. 202 (216).
4. Edwards v. A. G. of Canada [1930] P. C. 120 (126), 58 M. L. J. 300.
5. Courtauld v. Legh [1869] L. R. Ex. 126 (128).
6. R. v. Poor Law Commissioners [1838] 6A.& E. 56 (68); see also Srepati v. Kailash [1936] C. 331; Anandi v. Ram Sarup [1936] A. 495 F. B., [1936] A. L. J. 605 F. B.

Sub-s. (1).

(1) **"Articles."**—As to articles of association generally see s. 19 and notes. They may be altered 1 by special resolution 2 ; see notes to ss. 17-22.

(2) **"Company."**—An existing company has been defined in cl. (7), sub-s. (1) of this section.

Distinction between incorporated company and partnership.

One of the leading differences between a company and an ordinary partnership is that in the former a member can, and in the latter he cannot, sell his shares without the consent of all other members 3. An un-incorporated company, as distinguished from a partnership, means some association of members, the shares of which are transferable 4. In the case of an incorporated company besides the transferability of its shares there are other important distinctions, e.g., while in an ordinary partnership each partner is personally liable for all debts contracted or all wrongs committed by the firm 5, in an incorporated company the members have no individual liability in these matters and their personal liability is satisfied as soon as they paid the calls 6. There are other fundamental differences between a company incorporated under this Act and a partnership. For example, in a partnership one partner cannot transfer his share without the consent of the other partners, while in a limited company no such consent is necessary, and they are freely transferable, except so far as is restricted by the articles of association 7. In a partnership each partner is an agent of the firm to make contracts 8, while the members of a limited company are not its agents for any purpose whatsoever. Again the liability of each partner for the debts of the firm is unlimited, while that of each shareholder in a limited company may be limited by shares or guarantee. A limited company cannot buy its own shares 9.

A company is a distinct legal *persona.*

A company formed or registered under the Act is a distinct legal entity 10. It can own and deal with property, sue and be sued in its own name, contract on its own behalf and the members are not personally entitled to the benefits or liable for the burdens arising therefrom. Once the company is incorporated, it must be treated like any other independent person, and the motives of those who promoted it are irrelevant 11. It is altogether a different person from the subscribers to the memorandum of association even if they consist of a family, only one of whom holds all the shares, the others holding one share each 12 (see notes to s. 23). But it does not necessarily follow that every alleged transaction between such individual and the company would be valid, or that it would represent a real transaction 13.

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1. S. 20.
2. See s. 81.
3. Re Russel Institution [1898] 2 Ch. 72 at p. 80; S. 31, Indian Partnership Act (IX) of 1932.
4. Queen v. Registrar [1891] 2 Q. B. 598 at p. 610.
5. Indian Partnership Act, 1932, ss. 25 &26.
6. Oakes v. Turquand [1867] L. R. 2 H. L. 325.
7. See Ontario Jockey Club v. McBridge [1927] A. C. 916 P. C.
8. Indian Partnership Act, 1932, s. 18.
9. S. 54-A, *post.*
10. Salomon v. Salomon & Co. [1897] A. C. 22 ; for other cases see notes to s. 23.
11. Salomon v. Salomon & Co. (supra).
12. Salomon v. Salomon & Co. (supra) ; Gramophone & Typewriters v. Stanley [1908] 2 K. B. 89 ; T. R. Pratt (Bombay) Ltd. v. E. D. Sassoon & Co. [1936] B. 62, 37 Bom. L. R. 978, 161 I. C. 126.
13. *In re* Sir Dinshaw Petit [1927] 51 Bom. 327, 29 Bom. L. R. 447, [1927] B. 371.

Domicile.

The domicile of a corporation is the place considered by law to be the centre of its affairs, which (1) in the case of a trading corporation is its principal place of business, i.e., the place where the administrative business of the corporation is carried on ; (2) in the case of any other corporation is the place where its functions are discharged. The registration of the company is not for all purposes of itself decisive. The question in each case is where is it that the real business of the company is carried on ? According to the answer to that question, the company's domicile must in the main be determined. The domicile of a corporation is therefore the place where "the brain which controls the operations of the company is situate" 1. "A joint stock company resides", observed Kelly, C.B., "where its place of incorporation is, where the meetings of the whole company or those who represent it are held and where its governing body meets in bodily presence for the purposes of the company and exercises the powers conferred upon it by statute and by the articles of association" 2. In a recent case it has been held in England by Macnaghten J. that a limited company is capable of having a domicil. Its domicil is the place of its registration and that domicil clings to it throughout its existence 3. See notes to sub-s (2) of s. 3 *post.*

Suits by or against a company.

In order to redress a wrong done to a company or to recover moneys or damages by the company, the action should be brought by the company itself 4, except where the persons against whom the relief is sought themselves hold and control the majority of the shares and will not permit an action to be brought in the name of the company 5. In that case the Court allows the shareholders complaining to bring an action in their own names 6. But this indulgence is confined to those cases in which the acts complained of are of a fraudulent character or *ultra vires* 7. It is not necessary, as a matter of law, formally to ascertain the views of the majority before proceeding, but nevertheless, if no reason is given for the corporation not being consulted before litigation is undertaken, it must be clearly alleged and made to appear that the transaction is fraudulent or *ultra vires*, or the majority have abused their powers and are depriving the minority of their rights 8. No mere informality which can be remedied by the majority will entitle the minority to sue, if the act, when done regularly, would be within the powers of the company 9. "Where fraud is alleged", observed Marten, C. J., "and where consequently it is alleged that the suit is one of the recognized exceptions to the principles laid down in *Foss* v. *Harbottle* 9,

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1. Travancore National & Quilon Bank [1939] M. 318. See also Tulika v. Parry & Co. [1903] 27 Mad. 315 and the authorities cited there.
2. Quoted in Tulika v. Parry & Co. (supra).
3. Gasque v. Commissioner of Inland Revenue [1940] 2 K. B. 80.
4. Gray v. Lewis [1873] 8 Ch. App. 1035 ; Russel v. Wakefield Co. [1875] 20 Eq. 474 (479) ; Duckett v. Gover [1877] 6 Ch. D. 82 ; Burland v. Earle (infra) ; Bhajekar v. Shinkar [1934] B. 243, 36 Bom. L. R. 483, 151 I. C. 1082 ; Dhakeswari Cotton Mills v. Nilkamal [1938] Cal. 90, [1937] C. 645, 41 C. W. N. 137 ; see notes to s. 23.
5. Dhakeswari Cotton Mills v. Nilkamal (supra).
6. Ghandy v. Pugh [1923] 28 C. W. N. 479 ; Baillie v. Oriental Telephone &c. Co. [1915] 1 Ch. 503 ; see also Cockburn v. Newbridge Laundry Co. [1915] 1 Ir. L. R. 237 C. A. ; Cook v. Deeks [1916] 1 A. C. 554.
7. Burland v. Earle [1902] A. C. 83 ; North West Transporation Co. v. Beatty [1887] 12 App. Cas. 589 ; Menier v. Hooper's Telegraph Works [1874] 9 Ch. App. 350 ; Alexander v. Automatic Telephone Co. [1900] 2 Ch. 56 ; Vadilal v. Maneklal [1925] 27 Bom. L. R. 48, 49 Bom. 291, [1925] B. 188 ; Dhakeswari Cotton Mills v. Nilkamal (supra) ; see notes to s. 23.
8. Dhakeswari Cotton Mills v. Nilkamal (supra).
9. Foss v. Harbottle [1843] 2 Ha. 461.

it will, I think, generally be found that the case is allowed to go to trial to ascertain the facts before it is finally determined whether action of the majority can in fact bind the minority. This is because until the facts are ascertained with some directness, it is difficult to say what is the precise action of the majority and whether it only amounts on the one hand to those matters of internal management where the majority of the shareholders can rightly impose their will upon the minority, or whether on the other hand it is one of those cases in which the assets of the company are being improperly distributed by an attempt to pay them into the pockets of the majority of shareholders of the company or their friends at the expense of the minority" 1.

In cases of "fraud upon the minority", if the wrong-doer has the balance of power, and therefore the company does not take action, there are two courses open:

Remedy in cases of fraud upon minority.

The minority may take the risk and boldly use the company's name. The other course, which is the better course where the wrongful act is supported by the majority, is for the minority shareholders to sue in their own names or, as a matter of convenience, for a shareholder to sue on behalf of himself and all other shareholders. If however the wrong-doers are also shareholders, these shareholders, as a matter of course, must be excluded from the category of the plaintiffs: hence the phrase "except those who are defendants" 2.

Pleadings and parties.

In such cases the primary fraud must be clearly indicated. It is the gist of the action, although no doubt the pleading or the particulars may be so framed as to trace the dominance of the majority and the effectuation of the fraud through that dominance. Where a decision of the directors is attacked on the ground that it is injurious to the company, the directors should be parties. Where that act of the directors so impeached has been confirmed and is still impeached on the basis that the directors have got that confirmation by controlling the majority, still those directors should be parties 2.

Even where a minority of shareholders are alleged to have been overborne by the vote of the majority, the former cannot complain of acts which are valid if done with the approval of the majority or are capable of being confirmed by the majority, mere irregularity or informality which can be remedied by the majority being insufficient 3. Generally speaking, a person cannot charge a majority with wrong in adding to the voting power of the directors. There is nothing inherent wrong in that. A majority can increase its own majority, unless there is an element ef expropriation or coercion 2.

Where an action is brought by shareholders, the plaintiffs should distinctly allege the illegality of the act complained of and the impossibility of getting the company to impeach its validity. Mere irregularities committed by the directors cannot give a cause of action to shareholders and entitle them to challenge the validity of the resolutions passed, and the aggrieved shareholder must appeal to the company. The supremacy of the majority of shareholders is subject to certain exceptions, *viz*, (*a*) where the act complained of is *ultra vires* the company, (*b*) where the act complained of is a fraud on the minority and (*c*) where there is absolute necessity to waive the rule in order that there may not be a denial of justice 3.

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1. Vadilal v. Maneckial (supra) at p. 299.
2. Jhajharia Brothers, Ltd. v. Sholapur Spinning & Weaving Co. [1941] C. 174, [1941] 1 Cal. 30, 72 C. L. J. 458.
3. Bhajekar v. Shinkar (supra) following Foss v. Harbottle (supra).

The Court does not interfere for the purpose of forcing companies to conduct their business according to the strictest rules, where the irregularity complained of could be set right at any moment 1. In the last cited case the suit was a sequel to a resolution passed by the board and an extraordinary resolution passed in a general meeting and confirmed as a special resolution. In pursuance of the last two resolutions an agreement was executed by another company the effect of which was to appoint the latter as managing agent of the former company. The plaintiffs who were some of the directors brought this suit for challenging the said resolution and the respective meetings in which they were passed and for a declaration that the said resolutions were invalid and for an injunction restraining the latter company from action on the agreement.

Interference by Court.

The above are the general rules strictly adhered to, but there may be exceptions where justice of the case requires it 2. But in a case where the company ought to be the plaintiff, the shareholder must exhaust all reasonable means to get the suit instituted by the company, before he brings the suit himself 3. In a case in which the ground of action is the fraud of the majority, it is not necessary that a meeting of shareholders should first be called 4.

Who ought to be plaintiff.

In a case of urgency the intending plaintiff may use the company's name, but at his peril. In such an action the Court may give interlocutory relief, taking care that a general meeting be called as early as possible to determine whether the action has really the support of the majority 5. If it appears that the company's name has been used improperly, the suit will be struck out 6, and either the solicitor 7 or the person who instructed him 8, will have to pay the company's costs as between party and party 9.

A single shareholder may sue the company to enforce any individual right of his own. e.g., his right to have his vote recorded 10, or his right as a director to restrain his co-directors from excluding him from the board 11.

When the company is in liquidation, the only persons to whom the Court has any jurisdiction to give leave to use the company's name are the creditors and the contributories 12.

As soon as the company goes into liquidation, "the minority shareholders are no longer at the mercy of the majority wrongly retaining the property of the company by the strength of their votes. If the liquidator, acting at the behest of the majority, refuses, when requested, to take action in the name of the company against them, it is open to any contributory to apply to the Court" and under s. 215 (now s. 216), "it is open to the Court on cause shown, either to direct the liquidator to proceed in the company's name, or on proper terms as to indemnity and otherwise to give to the applicant leave to use

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1. Bhajekar v. Shinkar (supra) following Foss v. Harbottle (supra).
2. Russel v. Wakefield Co. [1875] 20 Eq. 474.
3. Morris v. Morris [1877] W. N. 6; Lloyd-Owen v. Bull [1936] P. C. 322 (323). See Mac Dougall v. Gardiner (infra); Pender v. Lushington (infra); Harben v. Phillips [1882] 23 Ch. D. 14; Imperial Hydropathic Co. v. Hampson [1883] 23 Ch. D. I.
4. Mason v. Harris [1879] 11 Ch. D. 97.
5. East Pant Co. v. Merryweather [1864] 2 H. M. 254.
6. Silber Light Co. v. Silber [1879] 12 Ch. D. 717.
7. Newbiggin Gas Co. v. Armstrong [1879] 13 Ch. D. 310; Fricker v. Van Grutten [1896] 2 Ch. 649.
8. Compagnie de Mayville v. Whitley [1896] 1 Ch. 788, 804.
9. Gold Reefs of W. Australia v. Dawson [1897] 1 Ch. 115.
10. Pender v. Lushington [1877] 6 Ch. D. 70; Srinivasan v. Subramania [1932] M.100.
11. Pulbrook v. Richmond &c. Co. [1878] 9 Ch. D. 610; Harben v. Philips (supra).
12. Cape Breton Co. v. Fenn [1881] 17 Ch. D. 198.

the company's name as plaintiff in any action necessary to be brought for the vindication of the company's rights. Nor is the contributory confined to that form of procedure. It would be open to him, so far as the directors are concerned, without leave from any one and by motion or summons in the winding up jurisdiction himself to bring the directors before the Court and obtain relief on the company's account" 1.

Suit by secretary.

Where a chief officer of the company had power under its articles of association to appoint a secretary for the purposes of management of the affairs of the company and he gave to the secretary, so appointed, the power for filing and defending suits for and on behalf of the company, a suit filed by the secretary as such is properly instituted 2.

In a suit by or against a company, for subscription and verification of pleadings, for service on the company and for the Court's power to require personal attendance of officers of the company, see order XXIX of the Code of Civil Procedure, Act V of 1908.

Costs.

Where one of the parties to a proceeding under s. 145 of the Code of Criminal Procedure, 1898 consisted of some managers of a limited company which was the real contestant and costs were awarded to the successful party, such costs could be realized either from the managers or from the company 3.

See notes to s. 23 *post*.

Ultra vires acts.

Where a dissentient minority seek redress against the action of the majority, the former must show that the action of the majority is *ultra vires* or that the majority have abused the powers and are depriving the minority of their rights 4.

If an act, not *ultra vires* the corporation and which, therefore, might be done with the approval of a majority, be done irregularly and without such approval, then the majority are the only persons who can complain 5, and the Court will not entertain the complaint except at the instance of the majority and in a proceeding in which the corporation is the plaintiff 6.

A single shareholder suing on behalf of himself and others or suing alone 7, may make the company a defendant and may restrain the company and the directors from doing an act which is illegal 8, or criminal 9, or *ultra vires* the corporation and which the majority are consequently incompetent to affirm 10. "If one individual having an interest complains of an act of the whole company or the executive of the whole company as being illegal, there is, as a general rule, no necessity for any other shareholders being present" 11.

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1. Lloyd-Owen v. Bull (supra).
2. General Relief Assn. v. Ganpat Ram [1937] L. 751.
3. Udhab v. Sidheswar [1937] Pat. 559.
4. Dominion Cotton Mills Co. v. Amyot [1912] A. C. 546 ; Dhakeswari Cotton Mills v. Nilkamal [1938] 1 Cal. 90, 41 C. W. N. 1137, [1938] C. 645.
5. Foss v. Harbottle [1843] 2 Hare 461 ; MacDougall v. Gardiner [1875] 1 Ch. D. 13; Burland v. Earle [1902] A. C. 83 ; see also Foster v. Foster [1916] 1 Ch. 532.
6. Mozley v. Alston [1847] 1 Ph. 790 ; MacDougal v. Gardiner (supra).
7. Simpson v. Westminster Hotel Co. [1860] 8 H. L. C. 712 ; Russel v. Wakefield Co. (supra) ; Hoole v. Great Western Ry. Co. [1867] 3 Ch. App 262 ; Howden v. Yorkshire Miners' Assn. [1903] 1 K. B. 308, 329, 336 ; Dominion Cotton Mills v. Amyot (supra).
8. Cockburn v. Newbridge Laundry Co. [1915] 1 Ir. L. R. 237 C. A.
9. Powel v. Kempton Park Co. [1897] 2 Q. B. 242, 260, 268.
10. Holmes v. Newcastle &c. Co. [1875] 1 Ch. D. 682 ; Hope v. International F. Society [1876] 4 Ch. D. 327.
11. Per Sir John Holt, L. J. in Hoole v. Great Western Ry. Co. [1868] 3 Ch. App. 262, 17 L. T. 153 ; see also Srinivasam v. Subramania [1932] M. 100 and Cotter v. National Union of Seamen [1929] 2 Ch. 58.

A stranger having sustained no special damage cannot sue the company 1, nor a shareholder who has with knowledge recovered and retains part of the proceeds of the *ultra vires* act 2, except to restrain future *ultra vires* dealings 3.

If the act complained of is not *ultra vires*, but is of a fraudulent character or in the nature of a wrong done to the company, and the wrong-doers are in the majority, then a single shareholder may bring the action on behalf of himself and others 4, making one of the majority a party defendant 5.

See notes to ss. 6 and 23.

Matters ultra vires and intra vires.

Where there is no suggestion of fraud, the company is bound in a matter *intra vires* by the unanimous agreement of its members, even at a directors' meeting where all the members were present 6. But where the matter is *ultra vires*, it is otherwise, as held by Lord Justice Lindley: Individual assents given separately may preclude those who give them from complaining of what they have sanctioned; but for the purpose of binding a company in its corporate capacity, individual assents given separately are not equivalent to the assent of a meeting 7.

Notice.

Outsiders are bound to know the "external position of the company" 8; but they have a right to assume that all matters of internal management have been compiled with 9. For fuller exposition of the principle see notes to ss. 17 and 23. Persons dealing with a company are deemed to have notice of its registered documents 10. A limited company can speak and act only through agents duly authorized in that behalf in accordance with its constitution, and if such company by special resolution authorizes any body of officers to draw cheques, sign, accept or endorse bills of exchange, promissory notes, cheques, orders of payment or other commercial papers, and such resolution has been communicated to the bank with which the company deals, the bank will be liable if it does not act in accordance with that resolution, even if it is misled by the fraudulent misrepresentation of an officer of the company who on previous occasions has dealt with the bank as an officer of the company; the bank is bound to be vigilant 11.

Knowledge.

If it is established by evidence that the duty of investigating and ascertaining facts has been delegated in the ordinary course of a company's business to a subordinate official, the company will in law be bound by his knowledge in the same way as it is affected by the knowledge of the board of directors. "It is true that in the *Houghton's case*, [1928 A.C. 1, 18] Lord Sumner points out that 'the mind, so to speak, of a company is not reached or affected by information merely possessed by its clerks.' And again, 'the knowledge which is relevant is that of directors themselves, since it is their board that deals with the company's rights.' But it must depend upon

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1. Towers v. African Tug Co. [1904] 1 Ch. 558, 571.
2. Towers v. African Tug Co. (supra).
3. Moseley v. Koffyfontein Mines [1911] 1 Ch. 73.
4. Russel v. Wakefield Co. (supra); Alexander v. Automatic Telephone Co. (supra); Burland v. Earle (supra).
5. Northern Assurance Ltd. v. Furnham United Breweries Ltd. [1912] 2 Ch. 125.
6. Express Engineering Works [1920] 1 Ch. 466 C. A.; see also Parker & Cooper Ltd. v. Reading [1926] Ch. 975.
7. George Newman & Co. [1895] 1 Ch. 674, 686, per Lindley L. J.
8. Mahony v. East Holyford Mining Co. [1875] 7 H. L. 869, 893.
9. Royal British Bank v. Turquand [1856] 6 E. & B. 327; Montreal Co. v. Robert [1906] A. C. 196, 202.
10. Ernest v. Nicholls [1857] 6 H. L. C. 401.
11. Bank of Montreal v. Dominion G. G. & Casualty Co. [1930] P. C. 278, 60 M. L. J. 149, 128 I. C. 669.

the facts of each case, where the matter is not especially determined by the articles, by what particular means of information and in what circumstances a company may properly be said to acquire knowledge, or have knowledge thrust upon them" 1.

In *Newsholme Bros.* v. *Road Transport & General Insurance Co.* [(1929) 2 K. B. 356 (374)] Scrutton L. J., quoting Lord Sumner says: "The knowledge of a person who acquires it in a breach of duty, and is guilty of a breach of duty in respect to it, is not to be imputed to a company to whom from the hypothesis he would be very unlikely to disclose it in fact."

Where one person is an officer of two companies, his personal knowledge is not necessarily the knowledge of both the companies. The knowledge which he has acquired as officer of one company will not be imputed to the other company, unless he has some duty imposed on him to communicate his knowledge to the company sought to be affected by the notice, and some duty imposed on him by that company to receive the notice; and if the common officer has been guilty of fraud or even irregularity, the Court will not draw the inference that he has fulfilled those duties 2.

As to the knowledge of directors see notes to s. 83A, *post.*

Acquiescence and estoppel.

As regards acquiescence and estoppel the position of a company seems to be somewhat different from that of an individual. "In the case of a natural person if information is intelligibly conveyed to and received by him its source, whether as servant or a stranger, whether he is high or low, matters little, if at all. With the artificial incorporated person, it must be necessarily otherwise, for an incorporated company cannot read or hear, except by the eyes and ears of others who are to be the organs by which it receives knowledge so as to affect its right" 3. In the last cited case Lord Dunedin observed as follows: "There can obviously be no acquiescence without knowledge of the fact as to which acquiescence is said to have taken place. The person who is sought to be estopped is here a company, an abstract conception, not a being who has eyes and ears. The knowledge of the company can only be the knowledge of persons who are entitled to represent the company. The knowledge of a mere official like the secretary would only be the knowledge of the company, if the thing of which knowledge is predicated was the thing within the ordinary domain of the secretary's duties. But what if the knowledge of the directors is knowledge of a director, who is himself *particeps criminis*, that is, if the knowledge of an infringement of the rights of the company is only brought home to the man who himself was the artificer of such infringement? Common sense suggests the answer, but authority is not wanting" 4. Then he cites the cases noted below 5. Effective ratification necessarily involves knowledge of all the material facts on the part of him who ratifies. Neglect of duty does not cease by repetition to be neglect of duty, and if there be any doctrine of "lulling to sleep," it must depend upon and can only be another way of expressing estoppel or ratification 6. "A limited company," observed Lord Tomlin, "cannot have a view except so far as the views of the agents by which it acts are to be deemed the views of the company" 7.

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1. Evans v. Employers' Mutual Insurance Association [1936] 1 K. B. 505 C. A., per Slesser, L. J. at p. 517.
2. T. R. Pratt (Bombay) Ltd. [1936] B. 62, 73 Bom. L. R. 978, 161 I. C. 126.
3. Per Lord Sumner in Houghton & Co. v. Nothard, Low & Wills Ltd. [1928] A.C. 1 at pp. 19, 20.
4. Ibid at pp. 13-14.
5. Hampshire Land Co. [1896] 2 Ch. 743, 749; Lacey v. Hill [1876] 4 Ch. D. 537.
6. Bank of Montreal v. Dominion G. G. & Casualty Co. (supra).
7. Peat v. Gresham Trust, Ltd. [1934] 151 L. T. 63 H. L. at p. 65.

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What punishment may be inflicted on company.

A company may be fined for contempt of Court[1]; but it cannot be convicted under a section which inflicts imprisonment or whipping only as punishment[2], nor can it be committed for trial on an indictment[3]. A company in liquidation, as distinct from individual liquidator, is incapable of committing an act of maintenance[4].

Company a person.

An incorporated company is a person within the meaning of the Acts of Parliament, unless the context shows that only a natural person is intended[5]. A company may be "a respectable and responsible person" within the meaning of a lease[6].

For other cases see notes to ss. 5 and 23.

(3) **"The Court."**—See s. 3 and notes thereto.

Debenture.

(4) **"Debenture."**—A Debenture means a document which either creates or acknowledges a debt[7]. It is usually associated with a corporation of some kind. Debentures are usually bonds issued by a company for sums of Rs. 10 or Rs. 100 or their multiples and are offered to the public by means of a prospectus in the same manner as shares.

Debentures may be for a fixed term of years or repayable on notice, or irredeemable[8]. They can be framed as payable to bearer. The custom to treat debentures to bearer as negotiable by delivery is recognized to take effect under the law merchant[9], and the Court will take judicial notice thereof[10].

"Fixed" and "floating" charges.

If the debenture gives no security on the assets of the company, the debenture-holder's position is no better than that of an unsecured creditor[11]. But generally mortgage debentures are issued which usually contain a charge upon the undertaking of the company and all its property, present and future, and may or may not give a charge upon uncalled capital. The charge may either be "fixed" or "floating." When the charge is "fixed" it affects the title to the property and the company can only deal with the property affected subject to the charge. But when the charge is a "floating" one, the company may, in the ordinary course of business, deal with the property covered by the charge, mortgaging, selling, disposing of it or using it up as the business requires, at any time before the charge attaches[12]. It remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes[13]. In *Illingworth* v. *Houldsworth*[14] Lord Macnaghten said: "A specific charge is one that without more fastens on ascertained or definite property capable of

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1. King v. J. G. Hammond & Co. [1914] 2 K. B. 866.
2. Hawke v. E. Hutton & Co. [1909] 2 K. B. 93.
3. King v. Daily Mirror Newspapers, Ltd. [1922] 2 K. B. 530. But see Triplex Safety Glass Co. v. Lancegaye Safety Glass (1913), Ltd. [1939] 2 K. B. 395 C. A. where it has been held that a limited company may be indicted for libel.
4. Metropolitan Bank v. Pooley [1885] 10 App. Cas. 210.
5. Hirst v. West Riding &c. Co. [1901] 2 K. B. 560. See General Clause Act, s. 3 (39).
6. Ideal Film Renting Co. v. Nielson [1921] 1 Ch. 575; Willmott v. London Road Car Co. [1910] 2 Ch. 525.
7. Levy v. Abercorries Slate Co. [1887] 37 Ch. D. 260.
8. Wiley v. Stocks [1909] 26 T. L. R. 41.
9. Johnston F. Patent Co. [1904] 2 Ch. 234; Bechuanaland Exploration Co. v. London Trading Bank [1898] 2 Q. B. 658.
10. Edelstein v. Schuler & Co. [1902] 2 K. B. 144.
11. Spiral Globe Ltd. [1902] 1 Ch. 396.
12. Florence Land Co. [1878] 10 Ch. D. 530; Wheatley v. Silkstone &c. Coal Co. [1885] 29 Ch. D. 715.
13. Government Stock &c. Investment Co. v. Manila Rail Co. [1897] A. C. 81.
14. [1904] A. C. 355 at p. 358.

being ascertained and defined, whereas a floating charge is ambulatory and shifting in its nature, hovering over and, so to speak, floating with the property which it is intended to affect until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp." As pointed out by Buckley L. J., "a floating security ; is not a future security ; it is a present security, which presently affects all the assets of the company expressed to be included in it. On the other hand, it is not a specific security ; the holder cannot affirm that the assets are specifically mortgaged to him. The assets are mortgaged in such a way that the mortgagor can deal with them without the concurrence of the mortgagee. A floating security is not a specific mortgage of the assets plus a license to the mortgagor to dispose of them in the course of his business, but is a floating mortgage applying to every item comprised in the security, but not specifically taffecting any item until some event occurs or some act on the part of the mortgagee is done which causes it to crystalize into a fixed security" 1. The terms "floating security" and "floating charge" are synonymous 2. See notes to ss. 109, 126 and 129, *post*.

Debenture stock.

Debenture stock is of the same nature as ordinary debentures 3 except that instead of each bond securing a definite amount, the whole sum secured is treated as a single stock, and certificates are issued declaring the holder to be entitled to a definite sum, part of the stock. The debenture stock may be repayable on a fixed date or may be irredeemable.

Director.

(5) "**Director.**"—Director includes any person occupying the position of a director 4. So it seems that a secretary or a manager occupying the position of a director is included within the term.

The true position of directors seems to be that of agents for the company with the powers and duties of carrying on the whole of its business, subject however to the restrictions imposed by the articles of association and the statutory provisions 5. But the directors are not agents for the shareholders 6, nor are they trustees for the creditors of the company 7, nor are they trustees in whom the property of the company is vested in trust for any specific purpose within the meaning of s. 10, Limitation Act 8.

As agents of the company they cannot make secret profits. "No man can in this Court," said Lord Cairns, L. C., "acting as an agent, be allowed to put himself into a position in which his interest and his duty will be in conflict" 9.

For the powers, duties and liabilities of directors see notes to ss. 83-A and 100 and Reg. 71 of Table A.

Manager.

(9) "**Manager.**"—This new definition of "manager" has been substituted by the Amending Act No. XXII of 1936. The old definition was no definition at all. The new definition follows the decision in *Basant* v. *Emp.* 10, in which it was held that unless a person is in charge of the entire business of a company, he

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1. Evans v. Rival Granite Quarries Ltd. [1910] 2 K. B. 979, 999.
2. Illingworth v. Houldsworth [1904] A. C. 355.
3. Murray v. Herring [1908] W. N. 153, [1908] 2 Ch. 493.
4. Coventry & Dixon's case [1880] 14 Ch. D. 660.
5. Faure Electric Accumulator Co. [1889] 40 Ch. D. 141. See also Ferguson v. Wilson [1866] 2 Ch. App. 77 and Gramophone & Typewriter Ltd. v. Stanley [1908] 2 K. B. 89 C. A.
6. Poole, Jackson & Whyte's case [1878] 9 Ch. D. 322.
7. Ashbury Ry. Co. v. Riche [1875] L. R. 7 H. L. 653.
8. Narasimha Iyengar v. Official Assignee [1931] M. 58 ; Kathiawar Trading Co. v. Virachand [1894] 18 Bom. 119.
9. Parker v. McKenna [1874] 10 Ch. App. 96.
10. Basant v. Emp. [1918] 19 Cr. L. J. 215, 43 I. C. 791.

cannot be deemed to be the manager thereof. The English Act does not contain the definitions of the words "manager" and "officer."

The old cl. (9) ran as follows :—

(9) "Manager" includes any person occupying the position of a manager by whatever name called, and whether under a contract of service or not :

(9-A) **"Managing agent."**—This definition is new and has been inserted by the amending Act (XXII) of 1936 on account of importance of the functions of managing agents in India. The distinction between "manager" and "managing agent" appears to be *first*, while the manager must be a person, the managing agent may be a person, firm or company ; *secondly*, the latter is *entitled*, as of right, to the management of the company by virtue of an agreement with the company, while the manager is the person who *has* actually the management of the company whether under an agreement or not. A director who actually manages a company without an agreement with the company for that purpose may be a manager, but not a managing agent. By contrast between clauses (9) and (9-A) a manager cannot, it seems, be a firm or company. The General Clauses Act however says that the word "person" shall include any company, association or body of individuals, whether incorporated or not. For the new provisions relating to managing agents see Introduction.

The Explanation to this clause makes it clear that if a person is called by any other designation but actually occupies the position of a managing agent he will be regarded as a managing agent for the purposes of this Act.

(11) **"Officer."**—After the word "director" the words "managing agent" have been inserted by the amending Act (XXII) of 1936. The word "officer" has not been defined in the English Act of 1929.

Private company.

(13) **"Private company."**—This definition has been substituted for the old one by the amending Act (XXII) of 1936, following the definition given in the English Act of 1929 with some modifications (compare s. 26 of the English Act of 1929 printed in the Appendix). In England it was held in 1912 that a company whose articles contained the restrictions, limitations and prohibitions mentioned in sub-clauses (a), (b) and (c) remained a private company even though they were not complied with **1**. In 1913 an amending Act was passed by which it was provided that if a private company failed to comply with any of the foregoing provisions, it ceased to be entitled to the privileges of a private company : but the Court might grant relief if the default was due to accident, inadvertence or other sufficient cause **2**. This was reiterated in ss. 26 and 27 of the English Act of 1929. In the Indian Act it was provided in sub-clause (ii) that a company which did not continue to observe the restrictions, limitations and prohibitions mentioned in sub-clause (i) would not be a private company. The Court had not been given the power to grant relief as in England. This has now been remedied by substituting the new s. 154 (s. 27 of the English Act of 1929) for the old one. The position of a private company is in most respects the same as that of a public company **3**. If one member practically holds all the shares, the company is still a distinct "person" **4**. As to the possibility of a private company being a partnership in guise of a company see the case noted below **5**. In the case noted below their Lordships

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1. Park v. Royalties Syndicate [1912] 1 K. B. 330.
2. S. 1 (2) (b) Companies Act 1913 (3 & 4 Geo. V. Cap. 25).
3. Re White [1913] 1 Ch. 231.
4. Salomon v. Salomon & Co. [1897] A. C. 22.
5. Yenidje Tobacco Co. [1916] 2 Ch. 426.

of the Privy Council have condemned the view, too widely current, that a private company need not be regarded as a corporation distinct from the persons composing it and that irregularities in connection with its liquidation, which in the case of a public company would be most serious, are venial and perhaps even permissible. "It is necessary, in their Lordships' opinion, that this view should be once for all dispelled"[1].

In estimating the number of members of a private company the secretary may be, but a director or managing director may not be, counted as one "in the employ" of the company[2].

In the articles of private companies provisions are sometimes made for compelling a shareholder at any time to transfer his shares to particular persons at a particular price. They are not void as being repugnant to absolute ownership or as tending to perpetuity[3].

Transfer of shares.

In the articles of association of a private company provisions are sometimes made to the following effect: any member desiring to sell any of his shares must notify the board of directors of the number of shares, the price and the name of the proposed transferee, and the board must offer to the other shareholders the number of shares offered at the price, and if the offer is accepted, the shares shall be transferred to the acceptors, and if the shares or any of them are not so accepted, the holder may sell or transfer them or any of them at the same or higher price to third parties approved by the board. For construction of such articles see *Ocean Coal Co.* v. *Powell Duffryn Steam Coal Co.*[4].

Where the articles of a private limited company provided that a member could not transfer his shares until he had given notice to the secretary offering to sell the shares at a price to be fixed by the auditor and until the secretary had offered them to the other members, one director having a right of pre-emption, it was held by the House of Lords that there was no effective sale of the shares, as the restrictions imposed by the articles had not been observed[5], and that the shareholder was not estopped from claiming rectification of the register of members, as the bankers to whom the shares had been assigned were well aware and had been informed by the former of all the restrictions upon the sale of the shares[5]. "I do not think", observed Lord Hailsham, L. C. at p. 248 in the last cited case, "that the disregard of article 17 rendered the transaction *ultra vires* the company, or that it could not have been regularized by the assent of all the shareholders; but that assent was never obtained."

Private and subsidiary private company—distinction.

In the provisions introduced by the amending Act (XXII) of 1936 distinction has been made between an ordinary private company and a private company which is subsidiary to a public company [for the definition of a subsidiary company see sub-sec. (2) of s. 2 *supra*]. As regards this distinction see s. 17 (2) proviso, s. 83-A (2), s. 86-D (3), s. 86-H, s. 87-A (5), s. 87-C (4), s. 87-D (4), s. 91-B (3) proviso, s. 91-D (1) and s. 144 (1) and (5) (iii).

Special privileges.

The following are the special privileges of a private company:—

(1). It may consist of two members only (s. 5).

(2). It is not necessary to hold a statutory meeting, to forward the "statutory report" to the members or file it with the registrar (s. 77). Under the old s. 77 the company had to hold a statutory meeting[6].

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[1] Ditcham v. Miller [1931] P. C. 203; 134 I. C. 324.

[2] Newspaper Proprietary Syndicate [1900] 2 Ch. 349; Cairney v. Back [1906] 2 K. B. 746; Normandy v. Ind, Coop & Co. [1908] 1 Ch. 84.

[3] Borland's Trustee v. Steel Bros. & Co. [1901] 1 Ch. 279; Attorney General of Ireland v. Jameson [1904] 2 Ir. R. (K. B. D.) 644. See in this connection ss. 10 and 11 of the Transfer of Property Act IV of 1882.

[4] [1932] 1 Ch. 654.

[5] Hunter v. Hunter [1936] A. C. 222.

[6] Gardner v. Iredale [1912] 1 Ch. 700.

(3). The directors need not file with the registrar a consent to act or sign the memorandum of association or contract for their qualification shares (s. 84).

(4). It is not necessary to file with the registrar a "statement in lieu of prospectus" (s. 98).

(5). Shares may be allotted before the minimum or whole amount of the share capital has been subscribed (s. 101).

(6). It may commence business or excercise borrowing powers as soon as it is incorporated (s. 103).

(7). Holders of preference shares or debentures have not the same right to receive and inspect the balance-sheet &c., as is possessed by the holders of ordinary shares (s. 146).

(8). It is not required to send a copy of the balance-sheet to the registrar (s. 134) or to the members (s. 131); but a private company must file with the registrar the annual list of members and summary under s. 32.

(9). In the case of a private company not being a subsidiary company of a public company it is not necessary that the auditor should hold a certificate from the Central Government (s. 144). Such a company can appoint a person as its auditor who is in the employment of a director or officer of the company [s. 144 (5) (iii)].

(10). Provisions regarding the appointment of directors (ss. 83-A and 83-B) and restrictions on appointment or advertisement of directors (s. 84), do not apply to a private company.

Privileges under amending Act. With regard to the provisions introduced by the amending Act XXII of 1936, the following privileges have been accorded to a private company which is not a subsidiary company of a public company:—

(1). Provisions of s. 54-A (2) relating to financial assistance for purchase of shares shall not apply [s. 54-A (2)].

(2). Regulations 78, 79, 80, 81 and 82 of Table A shall not apply [s. 17 (2)].

(3). S. 79 relating to provisions regarding general meetings shall not apply [s. 79 (1)].

(4). S. 86-D relating to loans of directors shall not apply [s. 86-D (3)].

(5). S. 86-H relating to restrictions on powers of directors shall not apply (s. 86-H).

(6). S. 87-A regarding duration of appointment of managing agent shall not apply [s. 87-A (5)].

(7). S. 87-C regarding remuneration of managing agent shall not apply [s. 87-C (4)].

(8). S. 87-D regarding loans to managing agents shall not apply [s. 87-D (4)].

(9). S. 91-B regarding prohibition of voting by interested director shall not apply [s. 91-B (3), proviso].

(10). S. 91-D regarding contracts by agents in which the company is undisclosed principal shall not apply [s. 91-D (1)].

(11). S. 144 regarding qualifications and appointment of auditors [s. 144 (1)].

The provisions of s. 87-I, relating to the limit on the number of directors appointed by managing agents, shall not apply to any private company, subsidiary or not.

In the case of a private company if not more than seven members are personally present at a general meeting, one member, and if more than seven members are personally present, two members shall be entitled to demand a poll [s. 79 (1)(c)]. In any case two members personally present shall be a quorum [s. 79 (2)(b)], if the articles do not otherwise provide.

New obligations.

A private company must send with the annual return required by sub-s. (1) of s. 32 the certificates mentioned in sub-s. (4) thereof. If a private company alters its articles so that they no longer include the provisions of cl. (13) of sub-s. (1), s. 2 the company must file with the registrar a prospectus or a statement in lieu of prospectus as provided by s. 154 (1). A private company is not entitled to issue share-warrants to bearer [s. 43 (2)].

The old cl. (13) ran thus:—

(13) "private company" means a company which

(i) by its articles—

(a) restricts the right to transfer its shares: and

(b) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty: and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company: and

(ii) continues to observe such restrictions, limitations and prohibitions:

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be considered as a single member:

Conversion of private into public company.

A private company may turn itself into a public company by complying with the provisions of s. 154. Even before such conversion the position of a private company is, in most respects, similar to that of a public company. Neither the Indian Act nor the English Act of 1929 makes any provision for conversion of a public company into a private company. But in Palmer's Company Law, 13th ed. (1929) at p. 392 occurs the following passage [1]: "Many existing public companies, which can conveniently be worked as private companies, have in like manner altered their regulations by special resolution." The new amending Act XXII of 1936, following s. 27 of the English Act of 1929, though it recasts the provision regarding conversion of private companies into public companies, does not make any provision for converting a public company into a private company.

For the consequences of reduction in the number of members below two, see s. 147.

(13-A) **Public company.**—This definition is new. It has been inserted by the Companies (Amendment) Act XXII of 1936.

What is a "prospectus."

(14) **"Prospectus."**—The words in italics have been inserted by the amending Act XXII of 1936. The word "prospectus" means that document by which capital is offered to the public and upon the basis of which the applicant has actually subscribed [2].

The Calcutta High Court has held that an advertisement in a newspaper offering shares to the public for sale is a prospectus within the meaning of this clause, although the advertisement specially refers to a prospectus a copy of which is available on application and a copy of which has been duly filed with the registrar [3].

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[1] See also Hals. p. 73, foot-note.

[2] Rousell v. Burnham [1909] 1 Ch. 127.

[3] Pramatha v. Kalikumar [1925] 52 Cal. 440, 29 C. W. N. 523.

In the last cited case Mr. Justice Manmatha Nath Mukherji observed as follows:—"Our attention has been drawn to a passage in Stiebel's Company Law and Precedents, 2nd ed. Vol. I, p. 258, foot-note, which is in these words:—'Sometimes one sees in newspaper advertisements issued by companies which propose to issue shares, which do not contain the statutory requirements and state that the publication is for information only and that the applicants must apply to the company for the full prospectus; such advertisements should never contain an application form, but they do not appear to be contrary to the Act.' No authority is cited in favour of this proposition; and in any case the present prospectus does not fall within that category, for it does not state that the publication is for information only, nor does it say that the applicants must apply to the company for the full prospectus, but only that the prospectus may be obtained on application."

"Public."

The word "public" has not been defined in the Act. It appears that the word does not include existing members and debenture-holders[1]. " 'The public' in the definition", observed Lord Sumner, "is of course a general word. No particular numbers are prescribed. Anything from two to infinity may serve: perhaps even one, if he is intended to be the first of a series of subscribers but makes further proceedings needless by himself subscribing the whole. The point is that the offer is such as to be open to any one who brings his money and applies in due form whether the prospectus was addressed to him on behalf of the company or not. A private communication is not thus open"[2].

"Offer to the public."

What is an offer to the public depends upon the circumstances of each particular case. It appears that an offer to the public means an offer by the company to any one who chooses to come in and take shares[3].

An offer of shares limited to the members of an existing company appears to be not an offer to the public[4]; nor does circulation by directors amongst their own friends a number of documents in the form of an ordinary prospectus and headed "strictly private and confidential" amount to an offer to the public[5]. An offer to the public by the liquidators of a company is not equivalent to the issue of a prospectus by the company[4].

In the under-noted case[6] Lord Justice Scrutton observed as follows: "*In re South of England Natural Gas Co.*[7], where some 3000 copies of a prospectus marked 'for private circulation only' were printed and issued to shareholders of gas companies in which the promoter was interested, Swinfen Eady J. held that the prospectus was issued to the public. On the other hand in *Sherwell v. Combined I. M. Syndicate*[3] where some of the directors without the authority of the company sent a prospectus marked 'strictly private and confidential, not for publication' to some of their friends, Warrington J. said that no action lay against the company, but also said that 'whether or not capital has been offered to the public was a pure question of fact..............It meant an offer of shares to any one who should choose to come in.' I agree with this." The decision in the case, namely, *Lynde v. Nash*[6] was reversed in the House of Lords which held that a prospectus is not "issued", if it is shown to one person privately and not as a member of the public[2].

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1. S. 93 sub-s. (3); Burrows v. Matabele Gold Co. [1901] 2 Ch. 23, 27; Booth v. New Afrikander Co. [1903] 1 Ch. 295; Nash v. Lynde [1929] A. C. 158.
2. Nash v. Lynde [1929] A. C. 158, 169.
3. Sherwell v. Combined I. M. Syndicate [1907] W. N. 110, 23 T. L. R. 482, 483.
4. Booth v. New Afrikander Co. (supra); Burrows v. Matabele Gold Co. (supra).
5. Sherwell v. Combined I. M. Syndicate (supra); but see South of England Natural Gas Co. [1911] 1 Ch. 573.
6. Lynde v. Nash [1928] 2 K. B. 93.
7. [1911] 1 Ch. 573.

See notes to s. 92.

The word 'debenture' includes debenture stock [see cl. (4) *ante*]. For statement in lieu of prospectus see s. 98.

Meaning of "share."

(16) **"Share."**—A share in a company cannot properly be likened to a sum of money settled upon, and subject to, executory limitations to arise in the future; it is rather to be regarded as the interest of the shareholder in the company measured, for the purpose of liability and dividend, by a sum of money, but consisting of a series of mutual covenants entered into by all the shareholders *inter se* in accordance with the provisions of the Companies Act and made up of various rights and liabilities contained in the contract including the right to a certain some of money 1.

A share in such a company as a manufacturing company carrying on its business in a foreign country resembles a chose in action in this respect only that it is assignable, and the assignee would be entitled to sue upon it to obtain his appropriate share of the net profits, just as the original holders would be 2.

See s. 28 and notes thereto, as well as notes to regulation 18, Table A. As to different classes of shares see notes to regs. 3 and 98 of Table A.

(17) **"Trading corporation."**—This definition has been inserted by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

Item No. 33 in List I (Federal Legislative List) in the Seventh Schedule to the Government of India Act, 1935 is a follows; "Corporation, that is to say, the incorporation, regulation and winding up of trading corporations including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit."

The effect of this definition is that a "trading corporation" includes not only trading corporations as such but also banking, insurance and financial corporations, but it does not include corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies.

Sub-s. (2) **"Subsidiary company".**—Sub-s. (2) reproduces s. 127 of the English Act of 1929. This definition has been inserted by the Companies (Amendment) Act XXII of 1936. As to the provisions relating to subsidiary companies introduced into the Act by the above amending Act see Introduction.

Income-tax on subsidiary & holding companies.

Where on the winding up of certain subsidiary companies their assets and undertakings were transferred to the holding company, the latter was properly assessed to income-tax as a successor to that part of its trade previously carried on by the subsidiary companies 3.

Definitions of other words and expressions.

In addition to the above the following words and expressions have been defined in the body of the Act:

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1. Borland's Trustee v. Steel Bros. Co. [1901] 1 Ch. 279; but see Parbhudas v. Ramlal [1866] 3 Bom. H. C. R. 69 O. C.
2. Singer v. Williams [1921] A. C. 41 at p. 53 (per Lord Atkinson).
3. Briton Ferry Steel Co. v. Barry [1940] K. B. 463.

Contributory	s. 158
Member	s. 30
Minimum subscription	s. 101
Registered office	s. 3
Special and extraordinary resolutions	s. 81
Statutory report and statutory meeting	s. 77

Besides these the following have been defined for the purposes of particular sections.

British India	s. 109
British register	s. 41
Certified	s. 277
Company	s. 153
Deed of settlement	s. 267
Director	s. 277
Expert	s. 100
Joint stock company	s. 254
Place of business	s. 277
Promoter	s. 100
Prospectus	s. 277
Unregistered company	s. 270
Vendor	s. 94

The Companies (Amendment) Act XXII of 1936 has introduced two more definitions: (1) An "investment company" has been defined as a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities [s. 87-F and s. 132-A (1), second proviso]. (2) A "banking company" means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the forms of business mentioned in s. 277-F [see s. 277-F].

Provisions as to companies registered in Burma or Aden before separation from India.

[2-A. Notwithstanding anything in the last preceding section, a company which was immediately before the separation of Burma and Aden from India a company as defined by the said section, being a company the registered office whereof is in Burma or Aden,—

(*a*) *shall be deemed for the purposes of this Act to be a company registered and incorporated outside British India, and*

(*b*) *shall not, unless the subject matter or context so requires, be included in the expressions 'company', 'existing company', 'public company', and 'private company'.*

Provided that—

(*i*) *for the purposes of section 277 of this Act such a company shall, for a period of six months from the separation, be deemed to be a company incorporated and registered in British India ;*

(*ii*) *the separation of Burma and Aden from India shall not render valid any mortgage or charge which, immediately before that date, was void against the liquidator or creditors of such a company.*"]

This new section has been inserted by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

Jurisdiction of the Courts.

3. (1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate :

Provided that the [*Central Government*] may, by notification in the [*Official Gazette*] and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district.

(2) For the purposes of jurisdiction to wind up companies, the expression 'registered office' means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

Alteration.

In the proviso the words "Central Government" and "Official Gazette" were substituted for the words "Local Government" and "local official Gazettte" respectively by the Government of India (Adaptation of Indian Laws) Order 1937, which came into operation on 1st April, 1937. The effect of the alteration was that the powers under the proviso could no longer be exercised by the Local, i. e., Provincial Government. But with effect from 1st April, 1938 the Central Government has entrusted the Provincial Governments with its functions under the proviso (*vide* Gazette of India dated 26th March, 1938, Part I, p. 440).

As a matter of fact, various Local Governments conferred limited or full jurisdictions on selected District Courts in their provinces long ago. But Bengal was bracketted with the North-West Frontier Province, Burma and Bihar and Orissa for the unenviable distinction of being considered as having no District Courts in the province competent to administer the company law. The Government of Bengal was at last roused to take some belated but very cautious and restricted action [after perhaps the proceeding in the Central Legislature during the passage of the new Companies (Amendment) Act] in November, 1936. So now the position is as follows :—

Bengal—jurisdiction has been conferred on all District Courts under ss. 38, 76, 104, 120 and 124 in respect of companies having a subscribed capital of not exceeding Rs. 50,000—Vide Notification No. 7288 Com. dated 2nd November, 1936, published in the Calcutta Gazette of the 5th November, 1936, Part I, p. 2553.

Assam—jurisdiction has been conferred on the District Courts of (1) Assam Valley and (2) Sylhet & Cachar in respect of companies having a subscribed capital of not exceeding Rs. 50,000.

Bombay—jurisdiction has been conferred upon the District Courts of Ahmedabad, Broach, Kaira, Poona, Satara, Sholapur and Surat in all matters under the Act.

Madras—jurisdiction has been conferred upon all District Courts under s. 104 only.

United Provinces—jurisdiction has been conferred upon the District Court at Cawnpore in respect of all matters under the Act, and upon that of Lucknow in respect of companies whose subscribed capital does not exceed Rs. 25,000.

Central Provinces and Berar—jurisdiction has been conferred upon all District Courts in respect of all matters under the Act.

The aforesaid orders conferring jurisdiction on District Courts in the provinces by the respective Local Governments, it is apprehended, lapsed on 1st April 1937 on which date the amendments (mentioned above) made by the Government of India (Adaptation of Indian Laws) Order, 1937 came into operation. Unless and until fresh Notifications are issued in this respect after 1st April 1938 by Provincial Governments, it is doubtful whether the above mentioned District Courts have jurisdiction under this Act.

"Court."

Under Act VI of 1882 the word 'Court' included the principal Civil Court of original jurisdiction in a district 1. The jurisdiction of the District Courts was taken away by this section, but under the proviso to this section full or modified jurisdiction might be re-conferred by the Local Government on any District Court. In that case the inferior Court would be able to decide matters of administration and dispute arising in winding up 2. Sub-s. (3), provides that a proceeding taken in a wrong Court shall not be invalidated for that reason. But it has no application when the objection to jurisdiction is taken at the very commencement of the proceeding and at the proper time 3.

High Court.

Sub-s. (1). The expression 'High Court' as used in this section is the High Court as a whole including the appellate and the original sides. Therefore under the Rules framed by the High Court all applications relating to companies, even those doing business in the *maffasil*, should be made on the original side of the High Court 4.

The expression High Court has been defined in the General Clauses Act 5, as the highest Court of appeal (not including the Federal Court) in that part of British India in which the Act or Regulation containing the expression operates. So the Chief Commissioner of Ajmer and Merwara is the High Court for the purposes of the Companies Act for places within its jurisdiction and not the Allahabad High Court 6.

The jurisdiction conferred on the High Court in company matters is the jurisdiction to deal with matters provided for by the Act, and it is very doubtful whether an application to rectify the register of the Registrar of Joint Stock Companies, for which no provision is made in the Act, can properly be brought before the Judge who is dealing with company matters 7.

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1. SS. 3 and 130 of Act VI of 1882.
2. See In re Stanton, Ltd. [1928] 1 K. B. 464.
3. Nataranjan v. Narasimha [1930] M. 74, 57 M.L.J. 723.
4. Jagadishpur Tea Co. v. McLeod [1925] 29 C.W.N. 404; Mohini Mills v. Susama Debi [1925] 52 Cal. 586, 29 C.W.N. 403, 41 C.L.J. 191.
5. Act X of 1897, s. 3(24).
6. Kekri Press Co. [1926] 48 All. 709, 24 A. L. J. 768.
7. Arya Insurance Co. [1937] C. 81, 63 Cal. 773.

The High Court has jurisdiction to transfer winding up proceedings from the High Court to any Court which has jurisdiction to wind up companies [1].

Proviso.—A District Judge, who has been empowered by the Provincial Government under this proviso, has extensive original jurisdiction; but it in no way ousts the revisional jurisdiction possessed by the High Court under s. 115 of the Code of Civil Procedure [2].

Where the registered office of a company is situated within the jurisdiction of the District Judge empowered under this proviso, he is the Judge who has jurisdiction to pass orders for payment of any amount that may be due from the contributories on account of the arrears in calls under s. 186; and if there is any dispute between the parties, he can adjudicate on it under s. 215 (now s. 216). The fact that certain contributories reside outside British India is immaterial, as by their agreeing to become members of the company they are amenable to his jurisdiction [3].

For definition of "District Court", see cl. (6), sub-s. (1) of s. 2 *ante*.

It has been held in England that under s. 165 of the English Act of 1929 the High Court has jurisdiction to transfer to the County Court proceedings for winding-up, no matter what the amount of the company's capital is [4].

Interference by Court.

"It is an elementary principle of the law relating to joint stock companies that the Court will not interfere with the internal management of companies acting within their powers, and in fact has no jurisdiction to do so" [5]. But the Court will interfere—to prevent a fraudulent sale by promoters to the company; to prevent fraud on a minority of shareholders; where directors are witholding payment of calls on their own shares while making calls on those of other members; where the company is existing only for being wound up and gratuities are voted to its servants and directors; where an arrangement is being carried out which is beneficial only to the majority of shareholders; where it is proposed to issue shares in satisfaction of dividends; where resolutions have been passed purporting to divide, on winding up, the assets in fraud of a class of shareholders; where the chairman of a meeting improperly rejected votes; where a proper notice of the purpose of a meeting involving payment to directors has not been given; where shares are being issued to secure a majority of votes; where the majority of directors exclude the minority from meeting of the board or a committee of it; or where the company is conducting its businees in an illegal way [6]. See notes under s. 2 (supra).

The Courts have inherent jurisdiction to compel due observance of the mandatory provisions of the Act. It is a fundamental principle of legal administration that where the law requires something to be done, there must be in existence a Court that can directly order it to be done. It is well understood in all systems of civilized jurisprudence that where there is a right, there is a remedy [7].

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[1] Vernor Heaton Co. [1936] 1 Ch. 289, 154 L. T. 374.

[2] British India Corporation v. Shanti Narain [1935] A. 310, 57 All. 810, 156 I. C. 1088.

[3] Sri Ganesh Co. v. Jiwan Ram [1934] L. 362, 15 Lah. 302, 147 I. C. 739.

[4] Vernor Heaton Co. [1936] 154 L. T. 374.

[5] Per Lord Davey in Burland v. Earle [1902] A. C. 83 at p. 93; see also Foster v. Foster [1916] 1 Ch. 532 at p. 547. Bhajekar v. Shinkar [1934] B. 243, 36 Bom. L. R. 483, 151 I. C. 1082.

[6] Hals. 289, 290 and the cases collected there.

[7] British India Corpn. v. Menzies [1936] A. 568 (571), [1936] A. L. J. 748.

Doctrine of "internal management."

People dealing with a company are fixed with notice of any limitations of the powers of the company contained in the statute under which it is incorporated or in the memorandum or articles of association; but if it is shown that a particular act was ostensibly authorized by them, persons dealing with the company are not concerned to see that the company has put itself into a position to exercise its powers properly. Outside parties are not concerned with the internal management of the company. They are not concerned to see that there was a proper quorum of directors present, or that persons who are apparently directors had in fact been validly appointed. Those are matters of internal management. If the disability of a director to vote upon a contract in which he was personally interested were imposed by the articles, the question whether he was personally interested in, and entitled to vote upon, a particular contract, would be regarded as matters of internal management with which persons dealing with the company would not be concerned 1. Where the main point involved is the interpretation of a certain clause in the memorandum of association relating to the application of the assets of the company, it is not a mere matter of internal management; a single member can therefore maintain a suit against the company for a declaration as to the true construction of the clause in question and the company can not be excused from being impleaded in such an action 2. As regards the future conduct of directors, the Court will not interfere in the management of the company's internal affairs 2. "If the majority of shareholders consider that a particular contract of employment should be terminated, the Court would not, as a rule, consider the matter at the instance of a minority" 3.

It has however been held in England that the doctrine of "internal management" may be pushed too far and it will place limited companies at the mercy of any servant or agent who may purport to contract on their behalf. Thus not only a director of a company with articles founded on Table A, but a secretary or any subordinate officer may be treated by a third party acting in good faith as capable of binding the company by any sort of contract, however exceptional, on the ground that a power of making such a contract might conceivably have been entrusted to him 4.

Where the majority of a company propose to benefit themselvs at the expense of the minority, the Court may interfere to protect the minority 5.

The High Court has jurisdiction to wind up a registered unlimited company which has no capital 6, or a guarantee company having no share capital 7.

As to the Court having jurisdiction for winding up unregistered companies see s. 271 (1) (i).

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1. T. R. Pratt (Bombay) Ltd. v. E. D. Sassoon & Co. Ltd. [1936] B. 62, 37 Bom. L. R. 978, 161 I. C. 126.
2. Bharat Insurance Co. v. Kanhaya Lal [1935] L. 792, 160 I. C. 24.
3. Ramkumar v. Sholapur Spinning &c. Co. [1934] B. 427, 36 Bom. L. R. 907—per Beamont C. J. at p. 427.
4. Houghton & Co. v. Nothard, Lowe & Wills [1927] 1 K. B. 246 C. A; on appeal [1928] A. C. I. (All previous cases on the point have been reviewed in this case). See also Kreditbank Cassel &c. v. Schenkers Ltd. [1927] I K. B. 826 C. A.
5. Menier v. Hooper's Telegraph Works [1874] 9 Ch. App. 350.
6. North of England &c. Assn. [1900] 1 Ch. 481.
7. Monmouthshire &c. Society [1901] W. N. 6.

Registered office & domicil.

Sub-s. (2). The position of the company's registered office is an important factor in determining where its residence is 1; but the question of residence is entirely distinct from domicile which is often independent of actual residence 2. Irrespective of the Act, for the purposes of winding up, the domicile of a company is fixed by the situation of its principal place of business 3, that is to say, its chief office where the central management and control are actually to be found 4. See p. 29 *ante*.

Residence and jurisdiction.

A registered company can have more than one residence for the purposes of income-tax 5. To constitute residence by a British company in a foreign State or to render the company subject to the jurisdiction of the Courts of that State, the company must, to some extent, carry on business in that State at a definite and reasonably permanent place 6. A question often arises where a company is incorporated in a foreign State but the central office of its business is in British India, whether the British Indian Court has jurisdiction. In such a case the latter Court has jurisdiction 7. In the last cited case an order for winding up of the company was passed by the Court in Travancore State where the company had been incorporated, and similar proceedings were also pending in the Madras High Court. An application under s. 153 for getting a scheme of compromise sanctioned was made in the Madras High Court which held that the application was maintainable. "One knows", observed Vaughan William J., "that where there is a liquidition of one concern, the general principle is—ascertain what is the domicile of the company in liquidation, let the Court of the country of domicile act as the principal Court to govern the liquidation, and let the other Courts act as ancillary, as far as they can, to the principal liquidation. But although that is so, it has always been held that the desire to assist in the liquidation —the desire to act as ancillary to the Court where the main liquidation is going on— will not ever make the Court give up the forensic rules which govern the conduct of its own liquidation" 8. An order for winding up passed by the Court of the place of incorporation, in which the principal liquidation is going on, does not bind a foreign creditor, the special forum of whose debt was not the place of incorporation 9.

Where the directors of a company made some payments more than a month after a petition for winding up the company was presented and an application was made under s. 235 against the directors some of whom were residing in England and one was residing in British India but in a different province, it was held that the High Court had no jurisdiction over persons residing in England, but had jurisdiction over

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1. Cesena Sulphur Co. v. Nicholson [1876] 1 Ex. D. 428, 35 L. T. 275.
2. Walcot v. Bonfield [1854] Kay 534.
3. Jones v. Scottish Accident Insurance Co. [1886] 17 Q. B. D. 421.
4. De Beers Consolidated Mines v. Howe [1906] A. C. 455 ; New Zealand Shipping Co. v. Stephens [1907] 96 L. T. 50, 24 T. L. R. 172 ; see also Southsea Garage Ltd. [1911] 27 T. L. R. 295.
5. Swedish Central Ry. Co. v. Thompson [1925] A. C. 495.
6. Littauer Glove Corpn. v. Millington [1928] 44 T. L. R. 746.
7. Travancore National & Quilon Bank [1939] M. 318.
8. English &c. Bank [1893] 3 Ch. 385 (394) ; see also Vocalion (Foreign) Ltd. [1932] 2 Ch. 196 ; Queensland Mercantile Agency Co. [1888] 58 L. T. 878 (879) ; North Australian Territory Co. v. Goldsborough &c. Co. [1889] 61 L. T. 716 (717) ; Matheson Ltd. [1884] 27 Ch. D. 225 (230).
9. Vocalion (Foreign) Ltd. (supra) ; New Zealand &c. Co. v. Morrison [1898] A. C. 349.

the person residing in British India, though in a different province [1]. It is a principle of international law that a Court should not serve its processes on persons outside its own jurisdiction and upon persons against whom the order, if passed, cannot be enforced. The power to serve outside jurisdiction is entirely a question of statute without which there is no such power [1].

As to the meaning of the expression "registered office" and its scope see the case noted below [2].

As to the "situs" of share for probate duty &c. see notes to s. 28.

For other cases see notes to s. 72.

PART II.

CONSTITUTION AND INCORPORATION.

Prohibition of partnerships exceeding certain number.

4. (1) No company association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other [*Indian law*], or of Royal Charter or Letters Patent.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other [*Indian law*] or of Royal Charter or Letters Patent.

(3) *This section shall not apply to a joint family carrying on joint family trade or business and where two or more such joint families form a partnership, in computing the number of persons for the purposes of this section, minor members of such families shall be excluded.*

(4) *Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.*

(5) *Any person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine not exceeding one thousand rupees.*

In sub-sections (1) and (2) the words "Indian Law" within square brackets have been substituted for the words "Act of the Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937. Sub-sections (3), (4) and (5) have been added by the Companies (Amendment) Act XXII of 1936. Sub-s. (3)

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[1] Bishadendu v. Reed [1937] Pat. 196.

[2] Okura & Co. v. Forsbacka [1914] 1 K. B. 715.

Effect of amendment.

excludes individual joint families from the operation of this section. But it seems that where two or more joint families carrying on joint family trade or business form a partnership and the total number of members of such joint families, excluding their minor members, exceed twenty,these joint families will come within the mischief of this section. The argument that individual members of a joint family are to be considered as sub-partners and the joint family consisting of these members should be reckoned as one person does not appear to be sound.

Sub-s. (4) provides for personal liability of each member who would come within the mischief of the section.

Sub-s. (5) provides that such member shall also be liable to a heavy fine.

Native State.

As the Act (of its own force) does not apply to a Native State, the transactions in such a State of an association consisting of more than twenty members are not illegal 1.

Object.

"The object of the Act" says Lord Justice James, "was to prevent the mischief arising from large trading undertakings being carried on by large fluctuating bodies so that persons dealing with them did not know with whom they were contracting and so might be put to great expenses, which was a public mischief to be repressed" 2.

Where the proprietors of a Zemindary are numerous, the formation of a limited company by them is beneficial not only to themselves, but to those who have dealings with them 3.

Maximum and minimum number of members.

The maximum number of members who can carry on business for gain without registration as a company is ten in the case of banking companies, and twenty in the case of any other company. But the minimum number required for the formation of a company is two in the case of a private company and seven in the case of any other company (see s. 5). The company may be wound up by the Court, if the number of members fall below this minimum 4. For consequences of carrying on business when the number of members falls below the minimum see s. 147. Although the number of members of a partnership does not at its inception exceed the above maximum, the company nevertheless becomes illegal, if subsequently that number is exceeded 5.

Illegal association.

An association consisting of more than the maximum number of members stated above and formed for the purpose of carrying on business with a view to gain is an illegal association 6. Such an association cannot sue on any contract made by it 7 and its members will be individually liable for the contract, unless the person suing was aware of the illegality at the time of entering into

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1. Appa Dada v. Ramkrishna [1930] B. 5, 53 Bom. 652, 31 Bom. L.R. 1187.
2. Smith v. Anderson [1880] 15 Ch. D. 247 C. A. at p. 273.
3. Lall Gopal v. Khororeah Zemindary Syndicate [1912] 16 C.W.N. 297.
4. S. 162, cl. (iv).
5. Re Thomas, *exparte* Poppleton [1884] 14 Q. B. D. 379.
6. Padstow Total Loss Association [1882] 20 Ch. D. 137; Naidu v. Mudalier [1918] 50 I. C. 513; Bhikaji v. Bapu [1877] 1 Bom. 550; Northcote Ginning Factory [1914] 26 I. C. 613; Mohideen v. Periyanayakam [1925] M. 233, 20 M. L. W. 430; Dawson v. the King [1939] R. 273.
7. Jennings v. Hammond [1882] 9 Q. B. D. 225; Madras H. M. B. Provident Fund v. Ragava Chetti [1895] 19 Mad. 200; Ramasami v. Nogendrayyan [1895] 19 Mad. 31; Senaji v. Pannaji [1930] P. C. 300, 34 C. W. N. 1107 affirmng Pannaji v. Kapurchand [1927] M. 123, 50 Mad. 175; Nibaran v. Lalit [1939] C. 187, [1938] 2 Cal. 368.

the contract 1. The members of a partnership or company hit by this section can however have beneficial interest in the property 2.

If the association of the individuals was a partnership, on each of such occasions when a death occurred and the heirs of a deceased partner were taken in, a new partnership would, in the eye of law, be formed, and this would clearly come within the words of sub-s. (2); for this section governs not only the first formation of the company, association or partnership, but rules its continuance. An association formed for trading may be perfectly legal at its formation, but if the number of persons increases later on and exceeds the maximum allowable under this section, the association becomes an illegal one 3.

Where four firms entered into a partnership and the aggregate of the number of members of all the firms exceeded twenty, it was an illegal association under this section and could not maintain a suit 4.

The illegality of a company does not protect its members from being sued by a stranger who was not aware of all the facts which made it an illegal association. Unless the person dealing with such an association is *particepes criminis*, there can be no *turpis causa* to bring him within the operation of the rule *ex turpis causa non oritur actio* 5. In the case of an illegal association a suit can be brought against some members of the association as the liability is joint and several under s. 43 of the Contract Act 5. Such an association cannot be wound up at the instance of the association or any of its creditors or members 6.

Such an association, however, need not be registered if it does not carry on business with a view to gain, either by the individual members or by the association as a whole 7.

Where a partnership consists of more than twenty members, it is an illegal association and partition suit by one partner against the remaining partners is not maintainable 8. Illegality in the mode of formation of a partnership is not the same thing as an illegality in regard to the consideration or object of the agreement. It is doubtful if a partnership agreement which has not been registered, though so required by this section, is void under s. 23 of the Contract Act 9. In the undernoted case the Allahabad High Court refused to make a declaration under s. 42 of the Specific Relief Act that such an association was unlawful 10.

Where a firm consisting of less than twenty partners is subsequently converted into a joint stock company with additional partners so as to consist of more than twenty partners, it must be registered. If it is not registered no suit can be maintained in respect of that partnership. But when a person who was a partner in the firm and was, as such, entitled to a share of the profits when the membership of the firm was below twenty, is not allotted any share in the newly formed company he, being totally

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1. South Wales A. Steamship Co. [1876] 2 Ch. D. 763.
2. Nibaran v. Lalit (supra); Queen v. Tankard [1894] 1 Q. B. 548.
3. Nibaran v. Lalit (supra).
4. Pannaji v. Senaji [1934] B. 361, 36 Bom. L. R. 786.
5. Appa Dada v. Ramkrishna (supra).
6. Padstow Total Loss Association (supra); South Wales A. Steamship Co. (supra); Ilfracomb Building Society [1901] 1 Ch. 102; Mewa Ram v. Ram Gopal [1926] A. 591, 48 All. 735, 24 A. L. J. 777.
7. Re Siddal [1885] 29 Ch. D. 1; St. James' Club [1852] 2 De G. M. & G. 383; Wigfield v. Potter [1881] 45 L. T. 612; Crowther v. Thorley [1884] 50 L. T. 43.
8. Madan v. Janki [1927] 25 A. L. J. 147, [1927] A. 487.
9. Allahbux v. Saindad [1933] S. 29.
10. Bhola Nath v. Lachmi Narain [1931] A. 83, 53 All. 316, [1931] A. L. J. 84.

unaware of the increase in the number of members and of the conversion, cannot be made to lose his right to a share of the profits. A suit by him for a declaration that there has been a dissolution of that partnership, and for accounts, cannot be dismissed on the ground of non-registration under sub-s. (2) 1.

What is an association.

To constitute an "association" within the meaning of this section, the existence of a legal relation between more than the maximum number giving rise to rights or obligations or mutual rights and duties is absolutely necessary 2. All the members of the association must be directly interested in the management of the concern either personally or through their constituted agent 3. If the substantial purpose of an association is not to carry on a business for gain, the fact that gain may accrue incidentally or may arise from merely subsidiary provisions does not make registration necessary 4. The proprietors of some wool factories entered into a pooling contract by virtue of which they agreed to work on factories in a certain manner and to share the total profits in certain proportions. The contract was for a period of 5 years. The defendant No. 1 was to work his factory for the first 2½ years and defendant No. 3 for the next 2½ years; plaintiff and defendant No. 2 had the option of working their factories or not as they pleased, but if they worked them they were bound to share profits with the other parties to the contract according to the terms thereof. It was held that the contract did not constitute a partnership or association, and that the proprietors were not carrying on any business jointly within the meaning of this section 5.

A trading association which is synonymous with the term "a trading company" or "a trading society", to be within this section, must also be one formed on the basis of contract between its members 6.

"Partnership."

The use of the word "partner" or "partnership" in the agreement does not necessarily show that there was a partnership. The parties may call themselves partners, but if it appears that one party is to do nothing more than advance money to the other and is to be repaid by a share of profits, they must be treated as creditor and debtor 7.

Effect of non-registration.

Where an association is compulsorily registrable under this section, but is not registered, one member of the association cannot sue another member in respect of any matter connected with the association 8, nor can a member or outsider maintain a suit against the association, for it cannot contract any debt 9, or enter into any contract 10. One of the members of such a company cannot sue for partition of the existing assets, or for any other relief 11. An association which is illegal cannot be wound up under the Act at the instance either of the association, a creditor or a shareholder 12. So too, an action by an illegal association,

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1. Parasurama v. Subburamachari [1938] M. 151.
2. Ramkrishna v. Baij Nath [1911] 8 A. L. J. 32; Neelamega v. Appiah [1906] 29 Mad. 477 F. B.; Panchena v. Gadinhare [1897] 20 Mad. 68.
3. Bipul v. Hazi Nasib Ali [1909] 13 C. W. N. 638, applying the principle of Smith v. Anderson (supra) and Crowther v. Thorley (supra).
4. Kraal v. Whymper [1890] 17 Cal. 786.
5. Madan v. Shewlal [1934] L. 882, 154 I. C. 156, 16 Lah. 574.
6. Nibaran v. Lalit [1939] C. 187, [1938] 2 Cal. 368.
7. See s. 6, Partnership Act, 1932 and Bhaggy Lal v. De Gruyther [1882] 4 All. 74; Bipul v. Nasib [1909] 13 C. W. N. 638, 1 I. C. 655; Mahomed Yusuf v. Pir Mohammad [1922] 65 I. C. 368.
8. Ramkrishna v. Baijnath (supra).
9. Re London Marine Association [1869] 8 Eq. 176.
10. Jennings v. Hammond [1882] 9 Q. B. D. 225 at p. 229.
11. Mewa Ram v. Ram Gopal (supra); Nathu v. Wali Mahammad [1933] L. 121.
12. Padstow Total Loss Assn. (supra).

whether against a member or any other person, will fail as soon as the illegality is disclosed 1. Such an association being an illegal body, its existence will not be recognised by law, and although a suit by a third party against the members of such an association is maintainable in certain circumstances, it would not be maintainable if the plaintiff was *particeps criminis* 2. It has been held by the Rangoon High Court that members of such an illegal association can bring a suit for declaring the respective shares of their association and directing that they be repaid their shares after recovering the buildings and other property of the association into which the subscription money is changed, into cash and after payment of debts and liabilities 3. Such a suit is governed by Art. 120 and not Art. 62 of the Limitation Act 3.

Where an association is illegal as being an unregistered association of more than twenty persons carrying on a business having for its object the acquisition of gain 4, the Court is not debarred from affording relief to the members asking for return of the money paid into the hands of agents, by granting an account 5. The cause of action for the return of money paid in order to form a society or business prohibited by this section accrues as soon as the money is paid, and there is no continuing cause of action in such a suit 6.

An association which ought to have been, but is not, registered under this section, is however liable to assessment to income tax on its profits 7.

"Carrying on business."

The expression "carrying on business" implies some continuous control of the business by the association 8. "Carrying on business" only exists where there is a joint relation of more than twenty persons for the common purpose of performing jointly succession of acts and not where the relation exists for a purpose which is to be completed by the performance of a single act 9. Where a business is carried on by trustees less than twenty in number, but the beneficiaries are more than twenty, the association is not illegal 9. Unregistered land companies have been held to be not illegal on the ground that they were formed merely for acquiring and dividing land between the members and not for carrying on any business of land-jobbing or trafficking in land 10. As to the meaning of the expression see *Okura & Co. v. Forsbacka* 11.

"Business."

"Business" is a wider term than "trade" and may include hiring land and employing a manager to farm it 12. Where an association or partnership is formed for purposes of carrying on a business, what the Court has to see is whether each of the members will be liable individually upon contracts made and whether each would have rights accruing to him upon such contracts 13. A single

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1. Re Day [1876] 1 Ch. D. 699.
2. Madan v. Shewlal (supra).
3. U Sein Po v. U Phyn [1930] R. 21, 7 Rang. 540, 120 I. C. 902.
4. Greenberg v. Cooperstein [1926] Ch. 657.
5. Ibid. But see Shaw v. Benson [1883] 11. Q. B. D. 563; Barclay v. Pearson [1893] 2 Ch. 154; Wilkinson v. Levision [1925] 42 T. L. R. 97 and Jennings v. Hammond [1882] 9 Q. B. D. 225.
6. Ram Kumar v. Nem Chand [1921] 19 A. L. J. 836.
7. Sri Gopalji Co. v. Commissioners of Income Tax [1931] L. 376.
8. Madan v. Shewlal (supra).
9. Smith v. Anderson [1880] 15 Ch. D. 247 C. A.; Crowther v. Thorley [1884] 50 L. T. 43.
10. Wigfield v. Potter [1881] 45 L. T. 612; Re Siddal (supra); Crowther v. Thorley (supra).
11. [1914] 1 K. B. 715.
12. Harris v. Amery [1865] L. R. I. C. P. 148; Commissioners of Inland Revenue v. Korean Syndicate [1920] 1 K. B. 598, 603, on appeal [1921] 3 K. B. 258.
13. Pannaji v. Kapurchand [1927] 51 M. L. J. 667, 50 Mad. 175, [1927] 123.

venture, where a single article or a number of articles on a single contract are purchased and sold, may not amount to a business, but where a number of bales are purchased at one time, sales are to go on, profits are to be realized and these profits are to be divided among the partners, it is not a single venture and amounts to a partnership within this section [1]. "Business" does not include the case of an association of persons who contribute sums to be applied in relieving its members in the case of sickness, the balance being distributable at the end of each year [2].

Person. The word "person" denotes an individual and does not include bodies of individuals whether corporate or not, since any such extended definition would be repugnant to the subject and context of the section [3]. So an association of several persons, consisting of more than twenty persons, formed with the object of acquiring commercial gain, is essentially within the purview of this section [3]. But it has been held by the Allahabad High Court that a person, who holds shares in a company personally as a trustee for a number of beneficiaries or as a guardian for a minor, is to be counted as one individual person, on the ground that the word "person" in this section can be used to include a collection of people, *e. g.*, an association of individuals known as a joint Hindu family, or beneficiaries interested beneficially in property vested in a trustee [4]. If the various individual members of one or more joint Hindu families form an agreement of partnership among themselves, then each individual member must be reckoned a person for the purpose of this section. If, however, there is merely a family partnership created by operation law, so that the individual members are governed by the principles of Hindu law and not by the Contract Act, then the individual members are merely sub-partners in any agreement made on behalf of the family, and the joint family consisting of these members should be reckoned as one person for the purposes of this section [5]. Sub-partners are not members of a firm and the existence of sub-partners would not affect the number of members of a firm for the purposes of this section [6]. But where persons exceeding twenty calling themselves as partners of four different unregistered firms, enter into a partnership to carry on business, and each person is individually entitled to the benefit of the contracts, the partnership is illegal under this section [7].

On the question whether a company registered under this Act is a "person" within the meaning of this section, King, C.J. and Ziul Hasan, J. observed: "We are doubtful whether registered companies cannot be held to be "persons" within the meaning of s. 4, as a registered company is a corporation and for most legal purposes can be held to be a person" [8]. In England under the Solicitors Act, 1932 [*Law Society* v. *United Service Bureau* (1934) 1 K. B. 343], the Dentists Act, 1878, the Veterinary Surgeons Act, 1881 and the Pharmacy Act, 1868 [*Pharmaceutical Society* v. *London & Provincial Supply Assn.* [1880] 5 App. Cas. 857] a "person" meant a natural person and not a body corporate.

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1. Senaji v. Pannaji [1930] P.C. 300, 59 M.L.J. 435, 34 C.W.N. 1107; see also Pannaji v. Senaji [1934] B. 361, 36 Bom. L.R. 786, 152 I.C. 580.
2. One & All Sickness Assn. [1909] 25 T.L.R. 674.
3. Akola Gin Combination v. Nothcote Ginning Factory [1914] 26 I.C. 613; Pannaji v. Kapurchand (supra); Senaji v. Pannaji (supra).
4. Motiram v. Mahammad Abdul [1924] 22 A. L. J. 487, [1924] A. 414; Mewa Ram v. Ram Gopal [1926] 24 A. L. J. 413, 48 All. 395.
5. Bisanchand v. Govinda [1934] N. 45; Pannaji v. Kapurchand (supra); Senaji v. Pannaji (supra). But see the new sub-s. (3) and notes thereon (supra).
6. Chandulal v. Kesavlal [1936] B. 246, 38 Bom. L. R. 486.
7. Senaji v. Pannaji (supra).
8. Raghunath v. Lucknow Sugar Works [1936] O. 56 (59), 159 I. C. 121.

"Gain." "Gain" is not limited to pecuniary gain or commercial profit only; and a company is formed for the acquisition of gain when it is formed to acquire something as distinguished from a company formed for spending something[1]. If one of the objects of a company be the acquisition of gain, the mere fact that the members either singly or jointly propose to dispose of the gain on some charitable object will not exclude the company from the purview of this section[2]. The primary object of the association is to be looked into and no regard should be paid to the circumstances that develop later on[2].

Foreign companies. A limited company incorporated under the laws of another country may trade in this country without being incorporated according to our law[3]. The word "formed" in this section must mean "formed in this country"[4]. If however a company incorporated in the foreign country established a place of business here, it must comply with the provisions of s. 277[4]. A foreign company cannot be registered as an existing company under the Companies Act[5], and cannot, unless it has an office in this country, be wound up here[6].

Other companies. The expression "or is formed in pursuance of some other Act" probably means formed and having existence recognized by another statute[7]. An unregistered company consisting of nine shareholders only does not require registration for its valid existence[8]. Mutual assurance associations are within the section[9].

Even before the new sub-s. (3) came into operation, it has been held, a joint family business concern, which by its nature descends from father to son, in which interests are acquired by succeeding generations, not by an act of parties but by the law of inheritance, was not an association of persons in this sense and did not therefore come within the scope of this section[10].

Sub-s. (5). It is true that offences under sub-s. (5) and s. 283 *post* are non-cognizable and cannot be investigated by the police under Chap. XIV of the Code of Criminal Procedure, 1898. But the mere fact that the offences were wrongly investigated and sent up by the police is not an obstacle to their being tried by a Magistrate[11].

Memorandum of Association.

Mode of forming incorporated company. 5. Any seven or more persons (or, where the company to be formed will be a private company, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated

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1. Arthur Average Assn. [1875] 10 Ch. App. 542; Padstow Total Loss Assn. (infra); Tan Waing v. Bo Hein [1932] R. 167.
2. Chhedi Lal v. Punna Lal [1930] A. 186, 52 All. 325, [1930] A. L. J. 337.
3. See Bateman v. Service [1881] 6 App. Cas. 386.
4. Buckley, 10th ed. p. 4.
5. Bulkely v. Schutz. [1871] L. R. 3 P. C. 764.
6. Lloyd Generale Italiano [1885] 29 Ch. D. 219.
7. Ilfracomb &c. Society [1901] 1 Ch. 102.
8. Mohideen v. Periyanaykam [1925] 20 M. L. W. 430, 84 I. C. 118.
9. Padstow Total Loss Assn. [1882] 20 Ch. D. 137.
10. Nibaran v. Lalit [1939] C. 187, [1938] 2 Cal. 368; see also Mewa Ram v. Ram Gopal [1926] 48 All. 395; Moti Ram v. Md. Abdul [1924] 46 All. 509.
11. Dawson v. the King [1939] R. 273.

company, with or without limited liability (that is to say), either—

(*i*) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares) ; or

(*ii*) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee) ; or

(*iii*) a company not having any limit on the liability of its members (in this Act termed an unlimited company).

As to the meaning and privileges of a private company see notes to s. 2, sub-s. (1), cl. (13).

"Persons." The word "persons" includes a married woman, a bankrupt and a foreigner residing abroad 1, but not an infant, as under the Indian Contract Act a minor is incompetent to contract, and a contract made by him is void 2. A firm is not a person, and the individual partners must subscribe 3. If a firm name is, with the authority of the firm, subscribed to a memorandum of association and is accepted by the registrar, the partners will be joint holders of the shares subscribed for 4, provided the partner subscribing had special authority from his co-partners to accept the shares 5. The registrar's certificate of incorporation is conclusive 6 ; but it will not make the illegal objects legal 7, nor does it obviate the objection that the memorandum was not signed by seven persons 8.

"Lawful purpose." The purpose for which a company is proposed to be established must be lawful. It must not be in contravention of the general law of the country, *e.g.*, to run a lottery. Where a scheme purports to grant interest-bearing loans on personal security to persons chosen by lot, it falls within s. 294-A of the Penal Code and as such is illegal 9. Where the main object of a company is the conduct of a lottery, the mere fact that some of its objects were philanthropic will not save the company from being unlawful. The purpose would still be illegal even where the illegal business is merely annexed to the real one which is philanthropic 10.

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1. Princess of Reuss v. Bos [1871] L. R. 5 H. L. 176, appeal from General Company &c. for Land Credit [1870] 5 Ch. App. 363 ; A—G v. Jewish Colonisation Assn. [1901] 1 K. B. 123.
2. Mohori Bibi v. Dharmadas [1903] 30 Cal. 539 P.C., 30 I.A. 114. For the position of an infant in England see Re Laxon & Co. [1892] 3 Ch. 555.
3. See Palmer's Company Law, 13th ed. p. 29.
4. Weikersheim's case [1873] 8 Ch. App. 831.
5. Niemann v. Niemann [1889] 43 Ch. D. 198 C. A.
6. See s. 24 and notes.
7. Bowman v. Secular Society [1917] A.C. 406 at p. 439.
8. Re Laxon & Co. [1892] 3 Ch. 555.
9. Pioneer M. B. & F. Society v. Asst. Registrar [1933] M. 129, 141 I. C. 107.
10. Universal Mutual Aid &c. Assn. v. Naidu [1933] M. 16. 63 M.L.J. 554, 139 I.C. 644, 33 Cr. L.J. 792.

Signatories to memo. In the absence of special regulation requiring the signatories to the memorandum to pay for their shares, they are not liable to do so, until a call has regularly been made upon them 1. A subscriber to the memorandum cannot, however, obtain rescission of his contract to take the shares subscribed on the ground of misrepresentation 2. He remains a member until such time as either the company which being authorized by its articles accepts a surrender of the shares for valid reasons, or the subscriber himself pays for the shares and validly transfers them to somebody else 3.

Members. Members are deemed to be aware of the contents of the memorandum and the articles of association 4. In fact it is the duty of a person taking shares in a company to use reasonable diligence in making himself acquainted with the provisions of these documents and he must take the consequences of his neglect 5.

Third persons. The memorandum of association does not constitute a contract between the company and a third party who may be named therein 6, but third persons who have dealings with a company are also affected with notice of the provisions contained in the memorandum and the articles 7; but they are not bound to make further inquiries, and they may assume that the internal management of the company has been regular 8. When an agreement on behalf of a company is entered into with a stranger by one of the directors then, if it was possible under the articles of association for authority of all the directors to be delegated to one, and the stranger is aware of no facts to the contrary, the agreement will bind the company irrespective of whether such delegation has in fact taken place or not 9.

"One man company." Where a company was incorporated according to law and six of the subscribers held only one share each and the seventh held the balance of the twenty thousand shares issued, the House of Lords held that the Court could not inquire whether or not such a "one man" company was intended by the legislature when passing the Companies Act 10. But in a later case Philimore, J. held that a limited company may be a mere *alias* of the principal members in a case where fraud is shown 11 and a sale to such a company may turn out to be fraudulent 12. But see notes to s. 23.

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1. Alexander v. Automatic Telephone Co. [1900] 2 Ch. 56 C. A. See notes to s. 21 (2) *post*.
2. Lord Lurgan's case [1902] 1 Ch. 707.
3. U. P. Oil Mills Co. [1931] A. 701, 133 I. C. 424.
4. Campbell's case [1873] 9 Ch. App. 1.
5. Oakes v. Turquand [1867] 2 H. L. 325.
6. Ramkumar v. Sholapur Spinning &c. Co. [1934] B. 427, 36 Bom. L. R. 907.
7. Mahony v. East Holyford Mining Co. [1875] L.R. 7 H.L. 869; Whitechurch Ltd. v Cavanagh [1902] A.C. 117.
8. Conny of Gloucester Bank v. Rudry Merthyr &c. Co. [1895] 1 Ch. 629; Biggerstaff v. Rowatt's Wharf [1896] 2 Ch. 93; but see Premier Industrial Bank v. Carlton Manfg. Co. [1909] 1 K. B. 106, dissented from in Dey v. Pullinger Engineering Co. [1921] 1 K. B. 77.
9. Probodh v. Road Oils Ltd. [1930] C. 782, 57 Cal. 1101, 34 C. W. N. 570.
10. Salomon v. Salomon and Co. [1897] A. C. 22; see also A—G. for Canada v. Standard Trust Co. [1911] A. C. 498; Booth v. Helliwell [1914] 3 K. B. 252; Commissioners of Inland Revenue v. Sansom [1921] 2 K. B. 492, 501.
11. Re Darby, *exp.* Brougham [1911] 1 K. B. 95.
12. Re Fasey [1923] 2 Ch. 1; Gonville's Trustee v. Patent Caramel Co. [1912] 1 K. B. 599; Re Hirth [1899] 1 Q. B. 612; Re Slobodinsky [1903] 2 K. B. 517; Re David [1913] 2 K. B. 694.

How a company is ended.

A company once bruught into existence by incorporation cannot be got rid of unless by winding up, even if the incorporation was an abuse of, or fraud upon, the Act of the legislature[1]. The registrar may however under s. 247 strike the name of a defunct company off the register and declare it dissolved. See s. 247 and notes.

Infant's signature.

In England the contract of an infant being voidable and not void, his signature to the memorandum of association is the signature of 'a person', and subsequent avoidance of the infant's contract does not invalidate the registration or any intermediate acts affecting rights of third persons[2].

Subscribers.

The subscribers to the memorandum need not be beneficially interested in the shares for which they have subscribed[3]. The memorandum of association has the effect of prescribing as well as limiting the liability of the members[4].

Limitation of liability.

The limitation of liability in respect of shares held is distinct from an obligation collaterally imposed upon a member, in certain events, to take up further shares which will themselves, when taken up, be entitled to similar limitations of liability. There is nothing in such collateral obligation which is *ultra vires* or repugnant to the system of limited liability[5].

Subject to certain restrictions there would appear to be no limitation upon the purpose for which a company may be formed under the Act[6].

6. In the case of a company limited by shares—

Memorandum of company limited by shares.

(1) the memorandum shall state—

(i) the name of the company, with "Limited" as the last word in its name ;

(ii) the province in which the registered office of the company is to be situate ;

(iii) the objects of the company ; [*and, except in the case of trading corporations, the territories to which they extend*] ;

(iv) that the liability of the members is limited ;

(v) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount :

(2) no subscriber of the memorandum shall take less than one share :

(3) each subscriber shall write opposite to his name the number of shares he takes.

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1. Princess of Reuss v. Bos [1871] L. R. 5 H. L. 176.
2. Re Laxon & Co. (supra).
3. Salomon v. Salomon & Co. and other cases in note (10), p. 57.
4. Ooregum Gold Mining Co. v. Roper [1892] A. C. 125 ; Welton v. Saffery [1897] A. C. 299, 322.
5. Agricultural W. Society v. Biddulph &c. Society [1925] 1 Ch. 769.
6. R. v. Registar of Companies [1914] 3 K. B. 116 ; Bowman v. Secular Society [1917] A. C. 406, [1915] 2 Ch. 447.

Alteration. In para (iii) of sub-s. (1) of this section after "the objects of the company" the words within square brackets have been inserted by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

Sub-s. (1). For the form of memorandum of association see form A in the Third Schedule of the Act.

"Limited." **Sub-s. (1), cl. (i).** In the memorandum of association of a company limited by share or guarantee, the company should be described as "Limited", unless it is formed for one of the objects specified in s. 26 and a license of the Provincial Government is obtained. When making a contract, an abbreviation such as "Ltd." or "Ld." may be used [1]. For the consequences of omission of the word or its abbreviation see notes to s. 73.

The name of a company may be changed by a "special resolution" and subject to the approval of the Central Government [2].

Cl. (ii). Every company must have a registered office the situation of which and any change thereof must be notified to the registrar [3]. See notes to s. 3 (3) and s. 72.

This clause provides that the memorandum must state the province in which the office of the proposed company must be situate; but once that province has been declared, there is no valid reason why the company should not fix its office anywhere it likes within the province and change it from time to time on giving notice [4].

Cl. (iii). This amended clause further requires that the memorandum must state, except in the case of trading corporations, the territories to which the objects extend. For definition of a "trading corporation" see s. 2 (1) (17), p. 26, *ante*.

Objects of company. The objects of a company should be clearly set forth in the memorandum, for a company can do only what is within, or incidental to, the objects stated therein [5]. The objects as stated in the memorandum cannot be departed from except so far as permitted by s. 12 of the Act. The memorandum is the charter of the company [6]. Consequently a contract made by the directors upon a matter not included in the memorandum is *ultra vires* and it cannot be made binding on the company by being expressly assented to at a meeting of shareholders, even by the whole body of them [7].

It is not enough to state the object to be to carry on any business which the company may think profitable, for this defines nothing [5]. The memorandum should specifically enumerate all the businesses the company is likely to undertake, as the words "to do all such other things as may be deemed incidental or conductive to the attainment of the above objects or any of them" will only cover operations of a nature similar to the businesses previously mentioned [8].

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[1] F. Stacey & Co. v. Wallis [1912] 28 T. L. R. 209, 106 L. T. 544.

[2] See s. 11(4) and notes.

[3] S. 72.

[4] Arya Insurance Co. [1937] C. 81.

[5] Ashbury Ry. Carriage Co. v. Riche [1875] L. R. 7 H. L. 653; Baroness Wenlock v. River Dee Co. [1883] 36 Ch. D. 675n. See also the dictum of Bowen L. J. in Guinness v. Land Corporation of Ireland [1883] 22 Ch. D. 349; Deuchar v. Gas Light & Coke Co. [1925] A. C. 691.

[6] Ashbury Ry. Carriage &c. Co. v. Riche (supra); Re Crown Bank [1890] 44 Ch. D. 634.

[7] Ashbury Ry. Carriage Co. v. Riche (supra).

[8] London Financial Assn. v. Kelk [1884] 26 Ch. D. 107.

Wide powers.

Wide powers taken in general words will be construed as merely ancillary to the specific objects mentioned in the earlier clause 1. A mining company should take powers to construct railways, tramways, canals, roads &c., and also to acquire lands and to dispose of them. Similarly, a bank or a loan company should take powers to develop, turn to account or improve land that may come into its possession.

Where the memorandum of a company in its final clause took power "generally to transact any business of merchant or capitalist either as principal or agent," this wide power was cut down by the Court to conform with the main objects of the company 2.

Construction of objects clauses.

Courts are not disposed to construe even the widest powers in such a way as to enable a company to go outside the main objects for which it was formed 3. The powers of a company, however, should not be construed strictly, and the company may do anything that is fairly incidental to the powers specified 4. In *Egyptian Salt & Soda Co. v. Port Said Salt Association* 5 their Lordships of the Judicial Committee observed as follows: "The learned Judge says that 'the memorandum is to be construed strictly.' If by this he meant merely that the memorandum must be construed in accordance with the accepted principles applicable to the interpretation of all legal documents, no exception need be taken to his statement, but if he meant that a specially rigid canon of construction is to be applied to the memorandum of association of limited companies, their Lordships do not agree. A memorandum of association like any other document must be read fairly and its import derived from a reasonable interpretation of the language which it employs." In the case noted below, the Court of Appeal in England strongly commented upon the practice of enumerating every possible operation as an object of the company in a string of clauses with a statement that each clause is independent of and not ancillary to any other clause 6. But it has also been held in this case that if a company state in the memorandum all the possible things the company may desire to do as independent main objects, and if this is the clear intention of the document, the Court will construe it in this manner 6. Where however the main object is gone, the company will be wound up 7. Whether any particular transaction is or is not

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1. German Date Coffee Co. [1880] 20 Ch.D. 169; Stephens v. Mysore G. R. Mining Co. [1902] 1 Ch. 745; Pedlar v. Road Block Mines [1905] 2 Ch. 427. But if there is a provision that each clause is to be read separately and not limited by other clauses, the difficulty may be overcome: Re Anglo-Cuban Oil Co. [1917] 1 Ch. 477 affirmed by the House of Lords *sub nom.* Cotman v. Broughman [1918] A. C. 514 overruling Stephens v. Mysore G. R. Mining Co. (supra).
2. Govind v. Rangnath [1930] B. 572 (577), 54 Bom. 276, 32 Bom. L. R. 232.
3. Amalgamated Syndicate [1897] 2 Ch. 600; London County Council v. A. G. [1902] A. C. 165.
4. Fostet v. London C. & D. Rail Co. [1895] 1 Q. B. 711.
5. [1931] A.C. 677 at p. 682, [1931] P. C. 182, 62 M. L. J. 163, 134 I. C. 333.
6. Anglo-Cuban Oil Co. (supra). In this case a clause in the memorandum ran thus: "Every sub-clause should be construed as a substantive clause and not limited or restricted by reference to any other sub-clause or by the name of the company and that none of such sub-clauses or the objects specified therein should be deemed subsidiary or auxiliary merely to the objects mentioned in the first sub-clause."
7. See notes to s. 162 and Amalgamated Syndicate (supra).

within the powers of a company, is a question of law depending on the construction of the objects clauses of the memorandum of association 1.

Where the memorandum of association deals with the rights of various classes of shares, in order to ascertain the rights attaching to particular classes of shares, the memorandum must be read and given effect to as a whole, unless any particular provision of the same violates an express provision of the statute, in which case that particular provision will be treated as invalid 2.

Implied power of company.

As regards the implied powers of a company, Lord Selborne, L. C. observed: "It appears to me that directors and general meetings of companies of this sort can have no powers by implication except such as are incident to, or properly to be inferred from, the powers expressed in the memorandum and articles. Their powers are entirely created by the law and by the contract founded upon the law which enables such companies to be constituted" 3. The doctrine that a company can do nothing which is not expressly or impliedly provided by its memorandum of association must be reasonably understood and applied. A company therefore in carrying on the trade for which it is constituted and in whatever may be regarded fairly as incidental to or consequential upon that trade, is free to enter into any transaction not expressly prohibited by the memorandum 4. Thus a trading company has an implied power to borrow money 5, and to sell land 6, and in the latter case it can give mortgage also 7.

Objects—not powers.

It should be remembered that under this section the memorandum should state the *objects* of the company and not the *powers*. This is pointed out clearly by their Lordships in the case noted below 8: "As Lord Wrenbury said in *Cotman v. Brougham* 9: 'Powers are not required to be and ought not to be specified in the memorandum. The Act intended that the company, if it be a trading company, should by its memorandum define the trade, not that it should specify the various acts which it should be within the power of the company to do in carrying on the trade'...It must be borne in mind that the purpose of the memorandum is to enable shareholders, creditors and those who deal with the company to know what is its permitted range of enterprise, and for this information they are entitled to rely on the constituent documents of the company. They have not access to other sources of information such as antecedent transactions."

In this connection the following observation in the speech of Lord Parker of Waddington in *Cotman v. Brougham* 10, is instructive: "The truth is that the statement of a company's objects in its memorandum is intended to serve a double purpose. In the first place it gives protection to subscribers, who learn from it the purposes for which

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1. Simpson v. Westminster Palace Hotel Co. [1860] 8 H. L. C. 712; Cotman v. Brougham (supra) at p. 520.
2. British India Corpn. v. Shanti Narain [1935] A. 310, 57 All. 810, 156 I. C. 1088.
3. Oakbank Oil Co. v. Crum [1882] 8 App. Cas. 65, 71.
4. Shamnagar Jute Factory v. Ram Narain [1887] 14 Cal. 189; Attorney-General v. Great Eastern Ry. Co. [1880] 5 App. Cas. 473; Deuchar v. Gas Light & Coke Co. [1925] A. C. 691; Egyptian Salt & Soda Co. v. Port Said Salt Assn. (supra).
5. General Auction &c. Co. v. Smith [1891] 3 Ch. 432.
6. Re Kingsbury Collieries [1907] 2 Ch. 259.
7. Patent File Co. [1870] 6 Ch. App. 83; see the judgment of Mellish L.J. at p. 88.
8. Egyptian Salt & Soda Co. v. Port Said Salt Assn. [1931] A. C. 677 P. C. at pp. 683-84.
9. [1918] A. C. 514 at p. 522.
10. [1918] A. C. 514 at pp. 520-21.

their money can be applied. In the second place it gives protection to persons who deal with the company and who can infer from it the extent of the company's powers. The narrower the objects expressed in the memorandum the less is the subscribers' risk, but the wider such objects the greater is the security of those who transact business with the company. Moreover experience soon showed that persons to transact business with companies do not like having to depend on inference when the validity of a proposed transaction is in question. Even a power to borrow money could not always be safely inferred, much less such a power as that of underwriting shares in another company. Thus arose the practice of specifying powers as objects, a practice rendered possible by the fact that there is no statutory limit on the number of objects which may be specified. But even thus, a person proposing to deal with a company could not be absolutely safe, for powers specified as objects might be read as ancillary to and exercisable only for the purpose of attaining what might be held to be the company's prime or paramount object, and on this construction no one could be quite certain whether the Court would not hold any proposed transaction to be *ultra vires*. At any rate, all the surrounding circumstances would require investigation. Fresh clauses were framed to meet this difficulty and the result is the modern memorandum of association with its multifarious list of objects and powers specified as objects, and its clauses designed to prevent any specified object being read as ancillary to some other objects."

Ultra vires.

A company cannot confirm or ratify anything which is *ultra vires* [1]. This term in its proper sense denotes some act or transaction on the part of a corporation which, although not unlawful or contrary to public policy if done by an individual, is yet beyond the legitimate powers of the corporation as defined by the statute under which it is formed, or the statutes which are applicable to it, or by its charter or memorandum of association. The term is often loosely used and applied to an act or transaction which is beyond the lawful powers of an individual.

Where an act is *ultra vires* of a company the consent, even of every member of it, cannot make it valid [2], as Lord Cairns clearly stated the law in the following passage: "If every shareholder of the company had been in the room, and every shareholder of the company had said 'that is a contract which we desire to make, which we authorize the directors to make, to which we sanction the placing of the seal of the company', the case would not have stood in any different position from that in which it stands now. The shareholders would thereby, by unanimous consent, have been attempting to do the very thing which by the Act of Parliament they were prohibited from doing" [1]. Such an act cannot be validated by the assent of a general meeting of the shareholders [3], or by obtaining judgment by consent [4], or by estoppel [5].

On the other hand, a transaction which is beyond the powers of the directors only, may be ratified by an ordinary resolution of a general meeting, although to authorize such acts in the future an alteration of the articles by passing a "special resolution"

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1. Ashbury Ry. Carriage Co. v. Riche [1875] L. R. 7 H. L. 653, 672.
2. Baroness Wenlock v. River Dee Co. [1883] 36 Ch. D. 675 n. on appeal 10 App. Cas. 354 ; Ashbury Ry. Carriage Co. v. Riche (supra) ; Towers v. African Tug Co. (infra).
3. Towers v. African Tug Co. [1904] 1 Ch. 558 C. A ; Ashbury Ry. Carriage Co. v. Riche (supra).
4. Great N. W. Central Ry. v. Charlebois [1899] A. C. 114 P. C.
5. Bishop v. Balkis Consolidated Co. [1890] 25 Q.B.D. 512 ; British Mutual Banking Co. v. Charnwood Forest Ry. Co. [1886] 18 Q.B.D. 714 ; Home & Foreign Investment Co. [1912] 1 Ch. 72, 80.

is necessary 1. The doctrine of *ultra vires*, as explained in the last noted case, is to be maintained, but is to be applied reasonably so that whatever is fairly incidental to those things which the legislature has authorized ought not, unless expressly prohibited, to be held *ultra vires* 2.

A company cannot purchase its own shares 3, or advance capital of the company to a director to do so 4, or accept surrender of its own shares except where it does not involve reduction of capital or does not amount to purchase of its own shares 5. It is *ultra vires* of a company to issue unauthorized capital, or reduce or repay capital without complying with the statutory requirements, or distribute bonus shares gratuitously, or issue shares at a discount 6, or pay dividends out of capital, or pay unreasonable sums for services rendered, or make payments for the benefit of a section of the shareholders, or subscribe to external objects 7.

Apart from any statutory powers, a company cannot employ its funds or assets for the purpose of any transaction which does not come within the objects specified in the memorandum of association. It cannot by its articles of association extend its powers in this respect 8. The purchase of shares of other joint stock companies, unless expressly authorized by the memorandum of association, is *ultra vires* 9, and the contract is not binding 10. It is not sufficient for the proposed transaction to be convenient, if it is not incidental to the objects stated in the memorandum 11. But if property is acquired by *ultra vires* expenditure, the company's rights over it may be protected 12. Where the memorandum or the articles give a limited power to borrow and mortgage its property, the company cannot borrow or mortgage beyond the limits set 13. A contract which is *ultra vires* is not necessarily illegal. Where a bank lent money on mortgage, it was held by the Madras High Court that the bank could sue on the contract, although the memorandum of association of the bank prohibited the bank from lending money on mortgage, on the ground that under the Indian law a mortgage is a transfer of interest in immovable property and property legally and by formal transfer, as laid down by Brice on the Doctrine of *Ultra Vires*, or conveyance transferred to a corporation is in law duly vested in such corporation which was not empowered to acquire such property 14.

Where a deed of guarantee was entered into between a company, a guarantor and a trustee for the preference shareholders whereby it was provided in clause 7 that any sum paid by the guarantor as dividend to the preference shareholders should be forthwith repaid to him by the company on demand, it was held that clause 7 was wholly *ultra vires* the company and void. "The instant that any sum is paid

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1. Ashbury Ry. Carriage Co. v. Riche (supra) at p. 675.
2. Attorney General v. Great Eastern Ry. Co. [1880] 5 App. Cas. 473.
3. Trevor v. Whitworth [1888] 12 App. Cas. 409. See s. 54-A.
4. Irish Prov. Assurance Co. [1913] 1 Ir. R. 352 C. A. See s. 54-A.
5. Rowell v. John Rowell & Sons Ltd. [1912] 2 Ch. 609.
6. Re Almada & Tirito Co. [1888] 38 Ch. D. 415 C. A.; Hongkong & China Gas Co. v. Glen [1914] 1 Ch. 527. But now see s. 105-A.
7. Hals. p. 288.
8. Trevor v. Whitworth (supra).
9. William Thomas & Co. [1915] 1 Ch. 325 at p. 329 : Jehangir v. Shamji [1868] 4 Bom. H. C. R. 185, O. C.
10. Re European Society Arbitration Acts [1878] 8 Ch. D. 679 C. A.
11. A. G. v. Mersey Railway [1907] A. C. 415.
12. National Telephone Co. v. Constables of St. Peter Port [1900] A. C. 317.
13. Baroness of Wenlock v. River Dee Co [1885] 10 App. Cas. 354.
14. Ahmed Said v. Bank of Mysore [1930] M. 512, 53 Mad. 771, 59 M. L. J. 28, 126 I. C. 612.

by the guarantor to the trustee for the preference shareholders, Cl. 7 authorises the guarantor to commence action for repayment of the sum as if he were a creditor of the company entitled to rank in the same position as any other creditor. The capital of the company might thereby be reduced otherwise than by expenditure on the objects defined in the memorandum of association." [1]. One limited company cannot stand guarantee for the contracts of another limited company without an express power given to the company, either in so many words or to be inferred from the general language used in the memorandum of association [2].

In the absence of a special power in the memorandum, it is *ultra vires* of a company to take shares in another company carrying on a different class of business, or for one company to amalgamate with another company, or for a company with powers to lend to guarantee the debts of a company promoted by it, or for a railway or tramway company to carry on an omnibus business [3].

On the other hand, it is not *ultra vires* of a company to pay pension to the family of a deceased officer or gratuities to its servants, to pay a reasonable brokerage for selling its shares, to take a larger house than what is necessary and sublet a portion. A trading company may borrow on or without security or accept bills of exchange or deposit its title deeds to secure an over-draft, or issue debenture stock as collateral security. A colliery company can purchase a colliery or sell land to a builder for the erection of colleges. A company whose powers include that of promoting may promote another company, subscribe the shares and pay the expenses of promotion [4].

Where a company is given by its memorandum express power to purchase land, it is implied that it has power to let the land, and if necessary also to sell it [5]. A company has large powers of selling its personal property as incidental to the management of its business [6]; but a power to sell or purchase the business of another company will not be implied [7]. Although a company cannot confirm or ratify anything which is beyond its powers, part of it may be valid if severable from that which is void [4]. Negotiation of negotiable instruments is within the ordinary course of business of a company, and no special power is necessary for the purpose [8]. But a company may make bills of exchange and promissory notes for the purpose of obtaining credit, if it is authorized by the memorandum of association or if its business is such as to make the use of bills necessary and not otherwise [9]. The company is liable to a *bona fide* holder of the bill if it is signed by some one having apparent, though not actual, authority [10]. Where a bill is made by the directors without authority, they will be personally liable to a *bona fide* holder [11]. A company can raise money by the issue of debentures and invest the same or any part of it, if the memorandum so authorizes it[1].

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[1] Walter's Deed of Guarantee [1933] 148 L. T. 473.

[2] Sree Minakshi Mills v. Ratilal [1941] B. 108, 43 Bom L. R. 53 [in this case the words were held to be sufficiently wide to enable the company to enter into a contract of guarantee (at p. 117)].

[3] For cases and other instances see Hals. pp. 286, 288. See s. 12.

[4] For cases see Hals. p. 287 and Palmer, 13th ed. pp. 62—63 and Buckley, 10th ed. p. 11. As to cases where employment of a company's fund or property has been held to be *intra vires* the company see Palmer, 13th ed. p. 62.

[5] Gujrat Ginning & Manfg. Co. v. Motilal H. S. Weaving Co. [1930] B. 84, 53 Bom. 792, 31 Bom. L. R. 1310 ; see also *Moore's Contract* [1907] 2 Ch. 259.

[6] Wall v. London N. A. Corporation [1898] 2 Ch. 469 C. A.

[7] Re European S. Arbitration Acts (supra).

[8] Choonilal v. Spence's Hotel Co. [1868] 1 B. L. R. (O. S.) 14.

[9] Peruvian Railways Co. v. Thames & M.M. Insce. Co. [1867] 2 Ch. App. 617,622.

[10] Dey v. Pullinger Engineering Co. [1921] 1 K. B. 77.

[11] West L. C. Bank v. Kitson [1884] 13 Q. B. D. 360.

Payment to a retired secretary and member of a club by way of annuity, pension or gratuity is within the powers of the club, although according to the memorandum of association the club is not for gain and no dividend, bonus &c., are to be paid by way of profit to the members[2]. But it has been held that granting pension to the widow of a former managing director is *ultra vires*, although the articles of the company authorized the directors to provide for the welfare of employees, their widows and children[3]. Where a company was formed to acquire business of chemical manufacture, a large sum of money was allowed to be distributed for the furtherance of scientific education and research on the ground that such distribution was likely to lead to direct and substantial (but not speculative or too remote) advantage of the company[4].

In this connection see Act XXXVII of 1940 (printed as Appendix A) authorizing companies, as from 3rd September, 1939, to make donations in a Government loan for the purpose of assisting the prosecution of the present war notwithstanding that the memorandum or articles of association of such companies do not enable them to do so.

If the directors carry on a trade which is *ultra vires* of the company, they cannot bind the company by the contracts and the consignees cannot recover in respect of their shipments[5]. If the directors misapply the capital of the company to a purpose which is *ultra vires*, they are liable to replace it[6]. It has been held in the last noted case that s. 10 of the Limitation Act does not apply to directors. A *bona fide* compromise of a reasonable claim by payment of a sum of money out of the company's capital is not *ultra vires*[7].

A mortgage of uncalled capital is allowable where the memorandum of association gives the power and there is nothing in the articles to the contrary[8]; but where the memorandum, while authorizing certain charges, omits to authorize a charge on uncalled capital, the omission may imply a prohibition[9]. A reserve fund created out of undivided profits is not capital[10], and it is not *ultra vires* of a company to purchase thereby shares of other companies, if the articles of the former so permit[11].

For cases illustrative of *ultra vires* transactions see Part I of Palmer's Company Precedents, 15th ed. (1938), pp. 431-432.

Where a loan is *ultra vires* of a company, the lender, whose money has been used to pay off the unauthorized loan, stands in the shoes of and can enforce the remedies of those whose loans were so satisfied[12]. Although the borrowing be *ultra vires* of a company, the lender may, in its voluntary winding up, rank as a creditor for the amount

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1. Imperial Bank of India v. Bengal National Bank [1930] C. 536, 57 Cal. 328.
2. Cyclists' Touring Club v. Hopkinson [1910] 1 Ch. 179; see also Normandy v. Ind, Coope & Co. [1908] 1 Ch. 84 at p. 104.
3. Lee, Behrens & Co. Ltd. [1932] 2 Ch. 46.
4. Evans v. Brunner, Mond & Co. [1921] 1 Ch. 359.
5. Port Canning Co. [1871] 7 B. L. R. 583.
6. Kathiwar Trading Co. v. Virchand [1894] 18 Bom. 119.
7. Irish Provident Assurance Co. [1913] Ir. R. 352 C. A.; Bath's case [1878] 8 Ch. D. 334.
8. Phoenix Bessemer Co. [1875] 44 L. J. (Ch.) 683, 32 L. T. 854; Newton v. Anglo-Australian Co. [1895] A. C. 244, P. C.
9. Newton v. Anglo Australian Co. (supra) at p. 249.
10. Verner v. General & C. I. Trust [1894] 2 Ch. 239.
11. Ariff v. Suratee Barabazar Co. [1919] 49 I. C. 288.
12. Reversion Fund & Insurance Co. v. Maison Cosway Ltd. [1913] 1 K. B. 364; Harris Calculating Machine Co. [1914] 1 Ch. 920.

Borrowing.

of the loan under the equitable doctrine of subrogation, if the moneys borrowed were applied in payment of the legitimate trading debts of the company 1. When an agent borrows money for a principal without the authority of the latter, but the principal takes the benefit of the money so borrowed or the money so borrowed has gone into the coffers of the principal, the law implies a promise to pay. There appears to be nothing in law which makes this principle inapplicable to the case of a joint stock company when the borrowing power of the company is unlimited. The position would be that the principal (the company) through its agents (the directors or the managing agents) had borrowed money which the principal had not authorized the agents to borrow. However the money having been borrowed and used for the benefit of the principal, either in paying its debts or for its legitimate business, the company cannot repudiate its liability to repay on the ground that the agents had no authority from the company to borrow. When these facts are established, a claim on the footing of money had and received would be maintainable 2.

Where the carrying on of a business by a company is *ultra vires*, that *ultra vires* transaction creates no debt, legal or equitable, and upon winding up of the company the contributories are not liable to pay such debts 3. A company can retain property paid for by it or recover money paid by it, although the purchase or loan was *ultra vires* 4. As to the persons who are competent to bring a suit in respect of *ultra vires* acts, see notes to s. 2 (2).

Ratification.

A company cannot confirm or ratify anything which is beyond its powers, express or implied, in the memorandum or conferred by the statute. Short of that, a transaction of the directors which is beyond their own powers, but within the powers of the company, can be ratified by a resolution of the company in a general meeting or even by acquiescence, provided that the shareholders have knowledge of the facts relating to the transaction to be ratified or the means of knowledge is available to them. A company may by a resolution at a subsequent meeting ratify any business which it purported to transact at a meeting informally called 5. In order to establish a case of ratification, it is essential that the party ratifying should be conscious that an act beyond the authority of the agent had been done, and further, after notice of that fact, the party consciously by an overt act agreed to be bound by it or, by acquiescence in the situation arising thereafter, allowed the business to continue. In either event consciousness of the act done by the agent without authority must be proved, and secondly it should be proved that after notice of such unauthorized act, the principal adopted the transaction 6. An incorporated company can ratify a tort committed by its agents 7. For other cases on *ultra vires* acts see notes to ss. 55 and 88.

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1. Per Eve J. in Airdale &c. Society [1933] 1 Ch. 639.
2. T. R. Pratt (Bombay) Ltd. v. E. D. Sassoon & Co., Ltd. [1936] B. 62, 37 Bom. L. R. 978, 161 I. C. 126.
3. Madras N. P. Fund Ltd. [1931] M. 792, 60 M. L. J. 270, 133 I. C. 378.
4. Birkbeck P. B. B. Society [1912] 2 Ch. 183 at p. 232, *sub nom.*, Sinclair v. Brougham [1914] A. C. 398 ; Great Eastern Ry. Co. v. Turner [1873] 8 Ch. App. 149 ; see also Cunliffe, Brooks & Co. v. Blackburn B. B. Society [1884] 9 App. Cas. 857, on appeal from Blackburn B. B. Society v. Cunliffe Brooks & Co. [1882] 22 Ch. D. 61.
5. Bhajekar v. Shinkar [1934] B. 243, 36 Bom. L. R. 483, 151 I. C. 1082.
6. T. R. Pratt (Bombay) Ltd. v. E. D. Sassoon & Co. (supra).
7. Catter v. St. Mary Abbots Vestry [1900] 64 J. P. 548 : cf. Hoole v. Speak [1904] 2 Ch. 732.

Objects must not be illegal.

The objects of a company must not be illegal or include anything in contravention of the Act[1], for instance, the issuing of its shares at a discount[2]. The distribution of the assets in a liquidation cannot be defined by the memorandum so as to deprive the shareholders of the rights given them by the Act[3]. The sale of all a company's assets and all its undertakings and distribution of the proceeds cannot be a corporate object, so that under a clause for that purpose, introduced into the memorandum of association, such a sale and distribution can be made without regard to the provisions of s. 208-C[3].

Where the objects do not include the return of a portion of the share capital to the shareholders in the shape of what is termed 'dividend', the articles providing for such return are *ultra vires*, being contrary to the objects clause of the memorandum of association[4].

Where the object of a company was "to advance money at interest on the security of land, houses, machinery and other property situated in India and to invest money not immediately required upon such securities and bank deposits as may be from time to time determined", a member of the company was held to be entitled to a declaration that advances of money in the nature of loans should only be made on the security of land, houses, machinery and other poperty situated in India, but that so far as the investment of money not immediately required was concerned, the directors had complete discretion in the matter of approving the kind of security offered[5].

Injunction.

A member of a company is not entitled to an injunction to restrain it from carrying out an object set forth in its memorandum of association[6]. If the act is only voidable and not void, a shareholder has no right to injunction[7]. A *bona fide* transaction with a company, impeachable on the ground of being *ultra vires*, will be set aside only on the terms that both parties be restored to their original position[8].

Intra vires.

A company is however bound in a matter *intra vires* the company by the unanimous agreement of all the corporators. If all the individual corporators in fact assent to a transaction that is *intra vires* the company, but *ultra vires* the board of directors, it is not necessary that they should hold a meeting in one room or at one place to express that assent simultaneously[9].

For cases illustrative of *intra vires* transactions see pp. 432-435 of Part I of Palmer's Company Precedents, 15th ed. (1938).

Clauses of memorandum.

For clauses commonly found in the memorandum of association see Palmer's Company Law, 13th ed. pp. 59-61. Additional provisions may be inserted in the memorandum, but if inserted without qualification, they become conditions of the company's constitution, and the rule is that such condition cannot be altered and that nothing can be done in contravention thereof[10]. If the

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1. Bowman v. Secular Society [1917] A. C. 406.
2. Ooregum Gold Mining Co. v. Roper [1892] A. C. 125. But now see s. 105-A.
3. See Bisgood v. Henderson T. Estates [1908] 1 Ch. 743, overruling Cotton v. Imperial &c. Corporation [1892] 3 Ch. 454.
4. Guinness v. Land Corporation of Ireland [1883] 22 Ch. D. 349.
5. Bharat Insurance Co. v. Kanhaya Lal [1935] L. 792, 160 I. C. 24.
6. McGlade v. Royal L. M. Insurance Society [1910] 2 Ch. 169.
7. Finance & Issue Ltd. v. Canadian Produce Corpn. [1905] 1 Ch. 37.
8. Irish P. Assurance Co. [1913] Ir. R. 352 C. A.
9. Parker & Cooper Ltd. v. Reading [1926] Ch. 975; George Newman & Co. [1895] 1 Ch. 674, 684, 686; see also Express Engineering Works [1920] 1 Ch. 466, 470.
10. Ashbury v. Watson [1885] 30 Ch. D. 376.

memorandum qualifies the provisions, *e.g.*, by giving power to alter them, that power may be exercised [1].

In *Oakbank Oil Co.* v. *Crum* [2], Lord Selborne observed: "It appears to me that directors and general meetings of companies of this sort can have no powers by implication, except such as are incident to, or properly to be inferred from, the powers expressed in the memorandum and articles. Their powers are entirely created by the law and by the contract founded upon the law which enables such companies to be constituted."

Where a company is not bound by a contract, it does not become bound for the fact that it acts under the mistaken belief that it is bound [3].

Shareholders in general meetings cannot authorize application of the company's funds in subscription for public objects, unless power has been taken in the memorandum [4]. Payments may however be made for matters that are reasonabiy incidental to or consequential on the business authorized by the memorandum, *e.g.*, expenses of its incorporation [5], liquidation [6], or those of stamping and posting proxy papers [7].

As to the power of making donations in a Government loan floated for the purpose of assisting the prosecution of the present war, see the War Donations and Investments (Companies) Act XXXVII of 1940, printed as Appendix A.

Limited liability.

Cl. (iv). This means that the liability of the members is limited to the amount payable on the shares. They are not bound to pay more even if the company contracts enormous debts.

"Share capital."

Cl. (v). The words "share capital" is used in contradistinction to borrowed money. The capital is not a debt of the company even to its shareholders [8]. In this Act the expression "share capital" has throughout been used instead of "capital" used in the previous Acts.

"Nominal capital."

The nominal capital is the amount which limits the potentiality of a company to issue the shares into which the capital is divided. When some of the "nominal" capital is subscribed, it at once becomes "issued" capital, the residue being "unissued" capital [9].

"Paid up capital."

The aggregate amount of payments of application moneys, allotment moneys and calls represents the "paid up" capital. Shares may be lawfully issued as "fully paid up" for consideration which the company has agreed to accept, as representing the money's worth, the nominal value of the shares, whether the shares are or are not the shares subscribed for in the memorandum of association [10].

"Fixed amount."

The "fixed amount" of a share must be a monetary amount, but it is not necessary that all the shares should be of the same amount. A capital of say Rs. 1,00,000 may be divided into 5,000 shares of Rs. 10 each and 500 shares of Rs. 100 each [11].

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[1] Welsbach I. Gas Co. [1904] 1 Ch. 87.

[2] [1883] 8 App. Cas. 65.

[3] Northumberland A. Hotel Co. [1886] 33 Ch. D. 16; Bagot P. T. Co. v. Clipper P. T. Co. [1902] 1 Ch. 146, [1901] 1 Ch. 196.

[4] Tomkinson v. South Eastern Ry. [1887] 35 Ch. D 675.

[5] Abstainers & General Insurance Co. [1891] 2 Ch. 124.

[6] Bishop v. Smyrna & Cassaba Rail Co. [1895] 2 Ch. 265.

[7] Peel v. London & N. W. Ry. [1907] 1 Ch. 5 C. A.

[8] Verner v. General & C. I. Trust [1894] 2 Ch. 239 at p. 264; Lee v. Neuchatel Asphalte Co. [1889] 41 Ch. D. I.

[9] Whitehead & Brothers, Ltd. [1900] 1 Ch. 804.

[10] De Beville's case [1868] L. R. 7 Eq. 11.

[11] See Hals. p. 90.

"Fixed" and "circulating capital."

The "fixed capital" of a company is what the company retains in the shape of assets upon which the subscribed capital has been expended, and which assets, either themselves produce income independent of any further action of the company, or being retained by the company are made use of to produce income or gain profits. The "circulating capital" of a company is a portion of the subscribed capital intended to be used by being temporarily parted with and circulated in business in the form of using goods or other assets which, or the proceeds of which, are intended to return to the company with an increment and to be used again and again and always returned with accretions. When circulating capital is expended in buying goods which are sold at a profit or in buying raw materials from which goods are manufactured and sold at a profit, the amount so expended must be charged against or deducted from receipts before the amount of any profit can be considered 1. Lord Hanworth, M. R. observed in the undernoted case 2: "It seems rather that the cases of *Hancock* 3 and of *Mitchell* v. *B. W. Noble Ltd.* 4. and of *Mallet* v. *Staveleg* 5, give illustrations that the test of fixed and circulating capital is the true one; and where, as in this case, the expenditure is to bring back into the hands of the company a necessary ingredient of their existing business—important but still ancillary and necessary to the business which they carry on—the expenditure ought to be debited to the circulating capital, which is employed in and sunk in the permanent—even if wasting—assets of the business."

Different classes of shares.

Although by this clause "the memorandum of association is to state the amount of the original capital and the number of shares into which it is to be divided, yet in other respects the rights of the shareholders in respect of their shares and the terms on which additional capital may be raised are matters to be regulated by the articles rather than by the memorandum of association and are therefore matters which (unless provided by the memorandum, as in *Ashbury* v. *Watson* 6), may be determined by the company from time to time by special resolution" 7. But if the memorandum defines the respective rights, they cannot subsequently be varied 6 without the sanction of the Court in a proceeding under s. 54 or s. 153, unless the memorandum also confers power to alter such rights 8. It is common to declare the rights, privileges and conditions of preference shares and founders' shares by express provisions in the memorandum of association, for by so doing extra protection is secured to the holders of such shares against any alteration of their status. But all this can be done and more properly done by the articles of association 9. The law in this regard has been clearly laid down by the Judicial Committee in a recent case 10: While the memorandum must state the amount of capital, divided into shares of a certain fixed amount, provision as to the character of the shares and the rights to be attached to them is more properly made by the articles, which may be altered from time to time by special resolution. If equality of the shareholders is expressly provided in the memorandum, that cannot be modified by the articles. If nothing is said in the memorandum, the articles may provide for the issue of the authorized capital in the form of

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1. Per Swinfen Eady, L. J. in Ammonia Soda Co v. Chamberlain [1918] 1 Ch. 266.
2. Anglo Persian Oil Co. v. Dale [1932] 1 K. B. 124.
3. [1919] 1 K. B. 25.
4. [1927] 1 K. B. 719.
5. [1928] 2 K. B. 405.
6. [1885] 30 Ch. D. 376; see also E. D. Sassoon United Mills [1929] B. 38, 30 Bom. L. R. 598, 110. I. C. 649.
7. Andrews v. Gas Meter & Co. [1897] 1 Ch. 361.
8. Underwood v. London Music Halls [1901] 2 Ch. 309: Welsbach I. G. Light Co. [1904] 1 Ch. 87.
9. Palmer's Company Law, 13th ed. p. 28.
10. Campbell v. Rofe [1933] A. C. 91, [1933] P. C. 39, 141 I. C. 526.

preference shares ; if the articles do not so provide or do provide for equality *inter socios*, the power to issue preference shares may be obtained by alteration of the articles. If the memorandum prescribes the classes of shares into which the capital is to be divided and the rights to be attached to such shares respectively, the company has no power to alter that provision by special resolution 1. A company is entitled to exercise the powers conferred on it by the memorandum, unless such right is clearly restricted by the articles 2.

Specification of rights in memo. or articles.

Specification in the memorandum of rights attached to a particular class of shares is regarded *prima facie* as one of the conditions referred to in s. 10 and therefore made unalterable 3 ; but if the rights are only conditionally attached, e g., if they are accompanied by a clause providing for alteration, such specification does not take effect as an unalterable condition 4.

If the memorandum is wholly silent on the point, the articles as originally framed and registered can effectually divide, or give power to divide, the capital into different classes of shares with preferential or other rights attached 5. If the rights of different classes of shareholders are fixed by the articles only, they can be altered by special resolution without leave of the Court 6.

When both the memorandum and the articles are silent, a company can issue different classes of shares by taking powers on alteration of the articles 7.

Rights of preference shareholders.

The holders of preference shares, unless the articles expressly so provide, are not entitled to more than their fixed dividend, however prosperous the company may be 8. Preference shares are presumably cumulative, and ambiguous or vague language in the articles will not make them non-cumulative 9. They may however be made non-cumulative if the articles so declare in clear language 10. If the shareholders are by the articles entitled only to dividends when declared, a preference shareholder cannot after liquidation claim payment on the ground that a dividend might have been declared 11.

Unless preference shares are made preferential as to capital, they are paid off equally with the ordinary shares upon liquidation of the company 12. But if they are preferential as to capital, any surplus assets after payment of the debts will, apart from any special provision in the articles 13, be applied first in paying off the capital of the preference shares 14.

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1. Campbell v. Rofe (supra) at p. 98 ; see also Andrews v. Gas Meter Co. [1897] 1 Ch. 361 ; British & American T. & F. Corpn. v. Couper [1894] A. C. 399.
2. Campbell v. Rofe (supra) at pp. 98-99.
3. Ashbury v. Watson [1885] 30 Ch. D. 376.
4. Welsbach I. G. Light Co. (supra) ; see also Underwood v. London Music Halls (supra).
5. Harrison v. Mexican Rail Co. [1875] 19 Eq. 358 ; South Durham Brewery Co. [1886] 31 Ch. D. 261.
6. Australian Estates &c. Co. [1910] 1 Ch. 414.
7. Andrews v. Gas Meter Co. [1897] 1 Ch. 361 ; see also Chithambaram v. Krishna [1910] 33 Mad 36.
8. Will v. United Lankat Plantations [1914] A. C. 11.
9. Foster v. Coles [1906] 22 T. L. R. 555.
10. Staples v. Eastman Photo Co. [1896] 2 Ch. 303 ; see Adair v. Old Bushmills Co. [1908] W. N. 24.
11. Odessa Waterworks Co. [1901] 2 Ch. 190 n.
12. Madame Tussaud & Sons [1927] 1 Ch. 657.
13. As in W. J. Hall & Co. [1909] 1 Ch. 521.
14. Gore-Browne, 36th ed. p. 29 ; see Espuela Land and Cattle Co. (infra) ; Will v. United Lankat Plantations (supra) ; National Telephone Co. [1914] 1 Ch. 755, and Fraser & Chalmers, Ltd. [1919] 2 Ch. 114.

If the memorandum or the articles declare that the preference shares shall confer a preference in the winding up, or that the surplus assets 1 shall be applied first in repaying the preference shares, but do not further deal with the capital, there is a difference of judicial opinion in England as to whether the preference shareholders will participate in any surplus after repayment of the ordinary shares 2. If the preference capital is repayable with interest, this means with interest from the date of the winding up, and any surplus from the sale of assets will be treated as capital 3.

Where a clause in the memorandum of association conferred on the preference shareholders "the right to a fixed cumulative preference dividend at the rate of 12 per cent. per annum on the capital for the time being paid up thereon, and to half the distributable surplus profits which in respect of each year shall remain after paying or providing for the payment of dividend for such year at the rate of 10 p. c. per annum on the capital for the time being paid up on the ordinary shares" and provided that their "shares shall rank both as regards dividends and capital in priority to the ordinary shares, but shall not confer the right to any further participation in profits or assets", it was held on the construction of the memorandum and articles that the preference shareholders were entitled, in priority to the ordinary shareholders, to payment of arrears of fixed cumulative preferential dividend and to repayment of capital. Every case depends upon the particular language used 4.

Where the articles state that the preference shareholders are to be paid in a winding up "arrears of the preference dividend", there will be no such arrears if the preference dividend was payable out of the profits of each year and there were no profits before the winding up 5; but the question is doubtful if the dividend is cumulative 6. It has however been held that profits earned after commencement of winding up are divisible as capital 7.

If the shares are issued as preference shares when there is no power to do so, or in an irregular manner, the subscribers are entitled to have their money paid back and are regarded as creditors of the company 8.

See regulations 3, 4 and 98 of Table A and notes thereto.

Memorandum of company limited by guarantee.

7. In the case of a company limited by guarantee—

(1) the memorandum shall state—

(i) the name of the company, with "Limited" as the last word in its name;

(ii) the province in which the registered office of the company is to be situate;

(iii) the objects of the company [*and, except in the case of trading corporations, the territories to which they extend*];

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1. "Surplus assets" means the surplus after payment of outside liabilities and repayment to the shareholders of capital paid (Ramel Syndicate [1911] 1 Ch. 749).
2. See note 14 last page and Palmer's Company Precedents, 15th ed. (1938), Part I pp. 773-74 and the cases cited there.
3. Anglo-French Music Co. [1921] 1 Ch. 386; W. J. Hall & Co. [1909] 1 Ch. 521.
4. Walter Symons Ltd. [1934] Ch. 308.
5. Espuela Land & Cattle Co. [1909] 2 Ch. 187.
6. Gore-Browne, 36th ed. pp. 28-29.
7. Bishop v. Smyrna & Cassaba Rail Co. [1895] 2 Ch. 596.
8. Cf. Home & Foreign Investment Co. [1912] 1 Ch. 72.

(iv) that the liability of the members is limited;

(v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount:

(2) if the company has a share capital—

(i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(ii) no subscriber of the memorandum shall take less than one share;

(iii) each subscriber shall write opposite to his name the number of shares he takes.

Alteration. In para (iii) of sub-s. (1) of this section the words within square brackets have been inserted by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937. See notes to s. 6 *ante*.

Memo. and articles of company limited by guarantee. For forms of memorandum and articles of association of a company limited by guarantee see Forms B and C of the Third Schedule. The articles of such a company must be registered with the memorandum and must state the amount of the share capital or, if the company has no share capital, the number of members with which the company is proposed to be registered 1. As to the increase or reduction of share capital of such a company registered after the commencement of this Act see s. 66. For the liability of a member of such a company in the winding up see s. 156, sub-s. (2). A member may be sued for the amount for which he is liable under the articles; he is not liable as a contributory in respect of such a sum 2.

The amount of guarantee of a company limited by guarantee is in the nature of reserve capital and cannot be mortgaged or charged before liquidation, but remains available for paying the costs of winding up and the general liabilities of the company 3.

The past members of such a company are liable to be put on the "B" list 4.

Notice of any increase of capital or in the number of members of a company limited by guarantee must be sent to the registrar 5.

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1. S. 17.
2. Baird's case [1899] 2 Ch. 593.
3. Irish Club Co. [1906] W. N. 127.
4. Premier Underwriting Assn. [1913] 2 Ch. 29.
5. S. 53.

8. In the case of an unlimited company—

Memorandum of unlimited company.

(1) the memorandum shall state—

(i) the name of the company;

(ii) the province in which the registered office of the company is to be situate;

(iii) the objects of the company [*and, except in the case of trading corporations, the territories to which they extend*];

(2) if the company has a share capital—

(i) no subscriber of the memorandum shall take less than one share;

(ii) each subscriber shall write opposite to his name the number of shares he takes.

Alteration.

In para (iii) of sub-s. (1) of this section the words within square brackets have been inserted by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937. See notes to s. 6 *ante*.

Memorandum and articles of an unlimited company.

For forms of memorandum and articles of association of an unlimited company see Form D of the Third Schedule. As to what the articles of such a company should contain see s. 17.

In the case of an unlimited company, the capital being stated in the articles may be varied at any time by special resolution without the sanction of the Court; and if the articles allow it, capital may be returned to the members and they may cease to be members on such terms as may be agreed upon [1].

As in the case of a company limited by guarantee, notice of any increase of capital or in the number of members must be sent to the registrar [2].

As to the registration of an unlimited company see ss. 67 and 68.

9. *The memorandum shall—*

Printing and signature of memorandum.

(*a*) *be printed,*

(*b*) *be divided into paragraphs numbered consecutively, and*

(c) *be signed by each subscriber (who shall add his address and description) in the presence of at least one witness who shall attest the signature.*

This has been substituted by the Companies (Amendment) Act XXII of 1936 for the original s. 9 which ran as follows :—

Signature of memorandum.

9. The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

For effect of the amendment see Introduction.

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[1] Borough Commercial & Building Society [1893] 2 Ch. 242.

[2] S. 53.

Attestation of signature.

One witness for all the subscribers will suffice [1]. But the signature of a subscriber cannot be attested by himself or by another subscriber, for the word "attest" implies "presence of some person who stands by, but is not a party to the transaction" [2].

Who may sign.

An agent may sign the memorandum of association on behalf of his principal, and the authority to sign may be given orally [3]. The execution will be good whether the agent simply writes his principal's name or adds words showing that it is signed by an attorney [4].

Liability of the signatory.

A signatory to the memorandum is responsible for the shares which are shown against his name in the memorandum, and on liquidation he is liable to the full extent, even if the shares were never formally allotted to him [5]. He remains a member until such time as he validly surrenders the shares or validly transfers them [6].

After registration a subscriber to the memorandum cannot divest himself of his liability as a member, although his signature may not have been properly attested; the transaction may be irregular, but it is not void [4]. The subscriber cannot repudiate his subscription on the ground that he was induced to sign by misrepresentation [7]. As to the effect of registration see ss. 23 and 24.

Stamp and fees.

As to the stamp on a memorandum of association see Appendix (Stamp duty). The stamp must be affixed before or at the time of signature [8]. As to the scale of fees, see Table B.

Restriction on alteration of memorandum.

10. A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act :

Provided that any provision in the memorandum relating to the appointment of a manager or managing agent and other matters of a like nature incidental or subsidiary to the main objects of the company, shall not be deemed to be such condition.

The proviso has been inserted by the Companies (Amendment) Act XXII of 1936.

Object of amendment.

The object appears to be to frustrate the designs of such managers, managing agents or secretaries who endeavour to perpetuate their office by inserting a clause to that effect in the memorandum. The amendment follows the recent decision of the Bombay High Court in *Ramkumar* v. *Sholapur Spinning & Weaving Co.* (*infra*).

Condition is not alterable.

As observed by Lord Justice Baggallay, "the memorandum of association forms indeed the charter of the company, to be modified only in the way provided by the statute" [9]. A condition contained in a company's memorandum of association cannot be altered and nothing can be done in contravention thereof [10]. If the memorandum qualifies the provisions, for instance, by

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1. Palmer's Company Law, 13th ed. 30.
2. Per Lord Selborne in Seal v. Claridge [1881] 7 Q.B.D. 516 at p. 519.
3. Whitley Partners [1886] 32 Ch. D. 337.
4. Chotolal v. Dalsukhan [1893] 17 Bom. 472.
5. Mirza Ahmed [1924] M.W.N. 582, 83 I.C. 94.
6. U. P. Oil Mills Co. [1931] A. 701, 133 I. C. 424.
7. Lord Lurgan's case [1902] 1 Ch. 707. 8. S. 17, Stamp Act, 1899.
9. Ashbury v. Watson [1885] 30 Ch. D. 376, 380-81.
10. Ashbury v. Watson [1885] 30 Ch. D. 376.

giving power to alter them, that power may however be exercised [1]. Where one of the conditions contained in the memorandum of association is that the rights and privileges given to the various classes of shares are subject to variation, varying them does not amount to an alteration of the conditions contained in the memorandum [2]. Where the articles were registered on the same day as the memorandum and the reference in a clause of the memorandum to the "privileges, rights, restrictions and conditions specified in the articles" obviously meant the contemporaneous articles which were registered on the same day, it was held that the rights, privileges and restrictions of the preference shareholders as defined in the articles should be treated as incorporated in the memorandum, and so could not be altered [3].

Meaning of "conditions."

The word "conditions" in this section is general, and is not restricted to conditions required by the statute to be inserted in the memorandum. If conditions, not required by the statute to be inserted, but in the sense of forming part of the constitution of the company, are inserted in the memorandum, they are unalterable [4], unless the memorandum reserves power to alter them [5]. But if the memorandum appoints a director without mentioning anything about his qualification, the company may afterwards impose a share qualification [6]. A company was registered under Act VI of 1882 (repealed) with the following words in the memorandum : "The registered office of the company will be situated in the town of Silchar :" held that the insertion of a place name in the memorandum of association does not make it an unalterable condition, and provided the alteration has been made in the manner provided by the Act, such alteration is valid and binding on the company [7].

It sometimes happens that the managing director, secretary or managing agents of a company with a view to perpetuate their office for ever get a clause inserted in the memorandum of association fixing their tenure of office and remuneration. But it has recently been held by the Bombay High Court that such provisions are nothing more than a detail of management for the purpose of carrying on the business of the company and cannot be considered to be a vital condition [8]. For the opposite view see the case noted below [9].

A company may alter its memorandum of association in the following respects :—

Alteration of memo.

(i) by changing its name (s. 11) ;
(ii) by altering is objects (s. 12) ;
(iii) by altering its share capital by (ss. 50 and 55)
    (a) increasing its share capital,
    (b) consolidating and dividing its capital into shares of larger amount,
    (c) converting its paid up shares into stock and reconverting the stock into paid up shares,

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1. Welsbach Incandescent Gas Co. [1904] 1 Ch. 87.
2. British India Corpn. v. Shanti Narain [1935] A. 310, 57 All. 810, 156 I. C. 1088.
3. Collins v. Birmingham Breweries Ltd. [1899] 15 T. L. R. 180.
4. Ashbury v. Watson [1885] 30 Ch. D. 376 ; but see Winstone's case [1879] 12 Ch. D. 239,251, & Guinness v. Land Corporation [1883] 22 Ch. D. 349, 376.
5. Welsbach I. G. Light Co. [1904] 1 Ch. 87 ; Underwood v. London Music Hall [1901] 2 Ch. 309.
6. Lord Claud Hamilton's case [1873] 8 Ch. App. 548. In this case the articles provided for the "future qualification" of directors and it was held that "future qualification" meant that of future directors and did not apply to the directors mentioned in the memorandum of association.
7. Arya Insurance Co. [1937] C. 81.
8. Ramkumar v. Sholapur Spinning & Weaving Co. [1934] B. 427, 36 Bom. L. R. 907.
9. Mercantile Bank v. Coimbatore M. Bank [1924] M. 126, 74 I. C. 966.

(d) sub-dividing its shares into shares of smaller amounts,
(e) cancelling shares;

(iv) by re-organizing its share capital (s. 54);
(v) by reducing its capital (s. 55);
(vi) by creating reserve liability (s. 69);
(vii) by making the liability of the directors unlimited (s. 71);
(viii) by variation of rights of holders of special classes of shares (s. 66-A).

See notes to s. 12.

Name of company and change of name.

11. (1) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

(3) *Except with the previous consent in writing of the* [*Central Government*], *no company shall be registered by a name which—*

(*a*) *contains any of the following words, namely, "Crown," "Emperor", "Empire", "Empress", "Federal", "Imperial", "King", "Queen", "Royal", "State", "Reserve Bank", "Bank of Bengal", "Bank of Madras", "Bank of Bombay", or any word which suggests or is calculated to suggest the patronage of His Majesty or of any member of the Royal Family or any connection with His Majesty's Government or any department thereof; or*

(*b*) *contains the word "Municipal" or "Chartered" or any word which suggests or is calculated to suggest connection with any municipality or other local authority or with any society or body incorporated by Royal Charter:*

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act.

(4) Any company may, by special resolution and subject to the approval of the [*Central Government*] signified in writing,... change its name.

(5) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the

circumstances of the case. On the issue of such a certificate, the change of name shall be complete.

(6) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

The sub-s. (3) above has been substituted by the Companies (Amendment) Act XXII of 1936. The original sub-s. (3) ran as follows:—

(3) A company shall not be registered by a name which contains any of the following words, namely :—"Crown," "Emperor," "Empire," "Empress," "Imperial," "King," "Queen," "Royal," "Bank of Bengal, Bank of Madras, Bank of Bombay," or words expressing or implying the sanction, approval or patronage of the Crown or the Government of India or a Local Government, except where the Governor General in Council signifies his consent to the use of such words as part of the name of the company by order in writing under the hand of one of the Secretaries to the Government of India.

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act.

The amendment has been suggested by s. 17 of the English Act of 1929. It will not affect companies registered before the above amending Act came into force.

In sub-ss. (3) and (4) the words "Central Government" have been substituted for the words "Governor General in Council" and "Local Government" respectively by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937. But in exercise of the powers conferred by sub-s. (1) of s. 124 of the Government of India Act, 1935 the Central Government has, with effect from 1st April, 1938, entrusted to Provincial Governments its function under sub-s. (4) but not under sub-s. (3)(*vide* Gazette of India dated 26th March, 1938, Part I p. 440). In sub-s. (4) after the words "in writing" the words "under the hand of one of the Secretaries to such Government" have been omitted by the same Government of India (Adaptation of Indian Laws) Order, 1937.

Company's name.

The word "company" or any similar word need not form part of a company's name. Such names as "Bose Brothers, Ltd.," "Rakha Mines, Ltd.," "M. T., Ltd.," "Canning Employees' Fund, Ltd.," may be used.

A new company is not permitted to be registered in a name so nearly resembling the name of an existing company as to be calculated to deceive [1], or to lead to confusion [2]. The registrar may refuse to register the company, and the Court generally does not interfere with his discretion, unless it is exercised on a wrong principle [3] of law or the registrar was influenced by extraneous considerations [3].

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[1] Hendriks v. Montague [1881] 17 Ch. D. 638 C. A.; Madame Tussaud & Sons v. Tussaud (infra); North Cheshire Brewery Co. v. Manchester Brewery Co. [1899] A. C. 83.

[2] Ewing v. Buttercup Margarine Co. [1917] 2 Ch. 1; Kingston, Miller & Co. v. Thomas Kingston & Co. [1912] 1 Ch. 575; Merchant Banking Co. v. Merchant's Joint Stock Bank [1878] 9 Ch. D. 560.

[3] King v. Registrar of Companies [1912] 3 K. B. 23.

A company may not get registered in a name as will lead to the belief that it is carrying on the business of an existing firm 1, even if it be a foreign company 2. The sound as well as spelling of the name will be considered 3, and absence of fraud is immaterial 4. If however the business is different and the name is not identical, there cannot be any objection on the ground that one of the names is identical 5.

Injunction.

The Court will grant an injunction where similarity of names may lead to confusion and to interference with the business of an existing firm or company 6. An inadvertent omission of the company to publish its corporate name will not disentitle it to have the use of its name protected by injunction 7.

In the case noted below 8 the defendant was restrained by injunction from using the initials "B. M. A." on the ground that people who might see the defendant's shops might come to the conclusion that the British Medical Association was in some way connected with those shops.

Principle on which the Court interferes.

The principle on which the Court interferes is that one person is not entitled to represent the business of another as carried on by him 9. A company cannot however appropriate a descriptive word or title so as to obtain a monopoly thereof 10. A person who has *bona fide*, and without any intention to deceive, adopted a name for business purposes and acquired it by reputation over a considerable period, is entitled to trade under that name and cannot be restrained from so doing, even though the similarity of the name to that of another firm engaged in business in the same trade may occasionally lead to confusion 11. The Court would not grant an injunction where there was no evidence that the defendants imitated the trade marks or labels of the plaintiffs or otherwise attempted to deceive the public, although there was a probability that the public would be occasionally misled by the similarity of the names of the plaintiffs 12.

Registrar's power.

The registrar has no power to refuse registration of a company upon the ground that the name of the company would be calculated to deceive people into the belief that the business was carried on by persons not registered as a company under the Act 13.

Distinction.

A distinction must always be drawn between cases in which the words are of common ordinary meaning and cases in which the words complained of are words which more or less partake of the character of fancy words or do not

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1. Madame Tussaud & Sons v. Tussaud [1890] 44 Ch. D. 678; Fine Cotton &c. Assn. v. Harwood, Cash & Co. [1907] 2 Ch. 184.
2. Societe Anonyme &c. & Levassor v. Panhard Levassor &c. Co. [1901] 2 Ch. 513.
3. Ouvah Ceylon Estates Ltd. v. Uva Ceylon Rubber Estates Ltd. [1901] 103 L. T. 416.
4. Pinet & Cie v. Maison Louis Pinet Ltd. [1898] 1 Ch. 179; Montreal Litho. Co. v. Sabiston [1899] A. C. 610.
5. Dunlop Pneumatic Tyre Co. v. Dunlop Motor Co. [1907] A. C. 430.
6. Ouvah Ceylon Estates Ltd. v. Uva Ceylon Rubber Estates Ltd. (supra); Huntley & Palmer v. Reading Biscuit Co. [1892] 9 T. L. R. 462; Thomas Montgomery v. Thompson [1891] A. C. 217; Harrods, Ltd. v. R. Harrod, Ltd. [1924] 40 T.L. R. 195.
7. H. E. Randall Ltd. v. British & American Shoe Co. [1902] 2 Ch. 354.
8. British Medical Association v. Marsh [1931] 47 T. L. R. 572; see also British Legion v. British Legion Club Ltd. [1931] 47 T. L. R. 571.
9. Du Boulay v. Du Boulay [1869] L. R. 2 P. C. 430.
10. Aerators Ltd. v. Tollit [1902] 2 Ch. 319; Electomobile Co. v. British Electromobile Co. [1908] 98 L. T. 258, 24 T. L. R. 192.
11. Jay's Ltd. v. Jacobi [1933] 1 Ch. 411.
12. Turton v. Turton [1889] 42 Ch. D. 128.
13. King v. Registrar of Companies, *exp.*, Bowen [1914] 3 K. B. 1161.

primarily relate to the article, but to the person who makes it. The onus of proving that words which are commonly and properly used as descriptive words have a secondary or subsidiary meaning so as to entitle the person, who has used them, to their exclusive use, lies on that person and is not easily discharged 1. The name or statement of fact may in its primary sense be strictly true, but may be otherwise in its secondary sense 2.

Right to use name.

Although in the absence of fraud or false personation a man is entitled to carry on business in his own name in competition with a similar business previously well established under the same name notwithstanding that confusion or mistake may arise in consequence, yet if he has never carried on such business, he cannot, by promoting and registering a company with a title of which his name forms a part, confer upon the company the rights which he possesses in the use of that name 3.

Name indicates objccts.

The name of a company indicates, to some extent, its objects 4. When a company ceases to carry on its principal business as indicated by its name, it is liable to be wound up on that ground 4.

Sub-s. (3). This was not in the English Act of 1908.

Sub-s. (4). If the special resolution is not duly passed, the registration of the new name will be vacated 5.

Sub-s. (5). The change of name is not complete until it has been made in the register and a new certificate of incorporation issued 6.

Alteration of memorandum.

12. (1) Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum so as to change the place of the registered office from one province to another, or with respect to the objects of the company, so far as may be required to enable it—

(a) to carry on its business more economically or more efficiently ; or

(b) to attain its main purpose by new or improved means ; or

(c) to enlarge or change the local area of its operations ; or

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or

(e) to restrict or abandon any of the objects specified in the memorandum ; *or*

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1. British Vacuum Cleaner Co. v. New Vacuum Cleaner Co. [1907] 2 Ch. 312 ; Cellular Clothing Co. v. Maxton & Murray [1899] A. C. 326.
2. Reddaway v. Banham [1896] A. C. 199.
3. Fine Cotton &c. Assn. v. Harwood, Cash & Co. (supra).
4. Re Crown Bank [1890] 44 Ch. D. 634; see also Cotman v. Brougham [1918] A. C. 514.
5. Australasian Mining Co. [1893] W. N. 74.
6. Shackleford, Ford & Co. v. Dangerfield [1868] L. R. 3. C. P. 407.

(*f*) *to sell or dispose of the whole or any part of the undertaking of the company* ; *or*

(*g*) *to amalgamate with any other company or body of persons.*

(2) The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition.

(3) Before confirming the alteration, the Court must be satisfied—

(a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration ; and

(b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court :

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

Clauses (*f*) and (g) have been added to sub-s. (1) by the Companies (Amendment) Act XXII of 1936. They reproduce clauses (f) and (g) of sub-s. (1) of S. 5 of the English Act of 1929. This removes a doubt caused by the decision in *John Walker & Sons* [1]. See *Marshal, Sons & Co.* (infra).

Scope.

This section only authorizes alterations which are within the limits provided by the memorandum of association [2]. "To my mind", says Lord Esher M. R., "It is a plain enactment that the company cannot alter anything in the memorandum which is a condition save what is expressly mentioned in that section......... Now anything which is laid down as a rule in the memorandum of association must, I think, be taken to be one of the conditions on which the company is established" [3]. This section does not, however, limit alteration of the memorandum to an alteration of the objects clause, inasmuch as the whole of the objects of a company is not necessarily contained in that clause [4]. The petition will be granted where the proposed alteration is designed for the better attainment of the objects of the company [4]. Where the memorandum confers certain preferential rights upon a particular class of shares, the rights become unalterably attached and cannot be modified unless under the provisions for modification provided for by any of the sections of the Act [5]. See s. 54 and notes.

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[1] [1914] S. C. 280.

[2] Ashbury Ry. Carriage &c. Co. v. Riche [1875] L. R. 7 H. L. 653.

[3] Ashbury v. Watson [1885] 30 Ch. D. 376, 380-81.

[4] Incorporated Glasgow Dental Hospital v. Lord Advocate [1927] S. C. 400.

[5] E. D. Sassoon United Mills [1929] B. 38, 30 Bom. L. R. 598.

Unlawful object.

The Court cannot allow alteration of the objects of a company so as to include in them an unlawful object. Where a prize chit, in which those who get the benefit of the drawings get a prize, and the benefit which they get from the drawings gives them different advantages from the persons whose names or numbers are not drawn, amounts to a lottery, the Court will not sanction alteration of a memorandum of association so as to include within its objects the conduct of such prize chits 1.

In the matter of confirmation of a resolution under this section, the Court is bound to exercise a discretion having regard to the interests of the various persons, shareholders, creditors and others 2.

Court's power of alteration.

The Court may however in its discretion sanction very wide 3 alteration of the objects of a company including the addition of a power to purchase other undertakings, to lease the whole of the company's business, to amalgamate with other concerns and to sell the whole or part of its business 4, for such consideration as the company thinks fit, and in particular for shares, debentures or securities of any other company having objects altogether or in part similar. But the Court will not make provision to meet the possibility of the company desiring at some future time to carry on yet another class of business 5. The Act does not enable a company in general terms to alter its memorandum of association, neither does it confer a general power upon the Court to do so ; but the alterations to be sanctioned are confined to those specified in the section 6. On a petition under this section, the Court will have to be satisfied that the new objects are definitely expressed in definite language and fall within sub-s. (1) 7.

On a petition for confirmation, the Court will not hear a person having an interest outside the company that may be injuriously affected by the alteration 8. In dealing with a petition for such confirmation the Court will assume, in the absence of evidence to the contrary, that the company will carry on its business properly, and will not therefore have regard to the fact that the alteration in its objects will enable the company to carry on a business competing with that of a body with a very similar name 8.

The Court rarely refuses to confirm a resolution for alteration of the objects 9. It is now well established that the Court has jurisdiction to sanction any alteration of the company's objects, even though consisting of the adoption of an entirely new object clause in modern form in substitution for an old restricted one, upon its being satisfied that this is required to place the company on an equality as regards the efficient carrying on its business with more recently formed companies 10.

If the alterations are such as to render the company's name misleading, the Court

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1. Udumalhat Nidhi Ltd. [1934] M. 482, 67 M. L. J. 415, 152 I. C. 440.
2. Mercantile Bank v. Coimbatore Mercantile Bank [1923] M. W. N. 568, 18 M. L. W. 304, 74 I. C. 966.
3. New Westminster Brewery Co. [1911] W. N. 247, 105 L. T. 946; Anglo-American Telegraph Co. [1911] W. N. 248, 105 L. T. 947.
4. Marshal, Sons & Co. [1919] W. N. 207, 63 S. J. 683.
5. John Brown Ltd. [1914] W. N. 434, 112 L. T. 232.
6. Government Stock Investment Co. [1891] 1 Ch. 649.
7. D. & D. H. Fraser Ltd. [1903] W. N. 73.
8. Hearts of Oak &c. Co. [1920] 1 Ch. 544.
9. Indian M. G. Extracting Co. [1891] 3 Ch. 531 ; Govt. Stock Investment Co. (infra) ; Alliance Marine Assurance Co. [1892] 1 Ch. 300 ; and cases in note 1 (infra).
10. New Westminster Brewery Co. (supra) ; John Brown Ltd. (supra) ; Marshall, Sons & Co. (supra) ; for other cases see Palmer's Company Law, 13th ed. p 75.

may require the name to be changed so as to express the alteration in its aims or sphere of action [1], unless such an alteration of the name will be very inconvenient [2].

Sub-s. (1). An alteration under sub-s. (1), *cl.* (*a*) must be one which will leave the business substantially what was before with only such changes in the mode of conducting it as will enable it to be carried on more economically or more efficiently [3]. Under this clause a power to borrow and give security, a power to invest reserves in various securities and other ancillary powers may be authorized [4].

In *cl.* (*b*), it should be noted, the expression is "to attain its main purpose" and not "to attain its objects."

An instance of *cl.* (*c*) will be found in the case noted below [5].

The additional business under *cl.* (*d*) may be a business wholly different from, and bearing no relation to, the existing business of the company and yet be capable of being conveniently and advantageously combined with it, provided that the new business is not destructive of or inconsistent with the existing business [6]. Whether the proposed new business is one of this description is a question for the determination of the directors and shareholders [6]; for the Court will not look to the wisdom or desirability of the proposed alteration. All that it has to decide is whether the alteration is fair and equitable as between the members of the company [7]. In the last cited case the Court refused to sanction an alteration involving abandonment of the objects of a fundamental character.

As an illustration of *cl.* (*e*) see the case noted below [7].

Alteration.

The alteration must be for one of the objects specified in the section which does not authorize alterations for mere amplification of the description of objects clearly comprised in the original memorandum [8], or the acquisition of a large number of general powers, many of which the company does not intend to exercise [9]. But an alteration is "with respect to the objects of the company" within the meaning of sub-s. (1), where it is desirable for the purpose of more efficiently carrying out the main object of the company [10].

The alteration of a company's objects may be confirmed wholly or in part [11]. The company may also make the alteration to restrict or abandon any of its objects [12].

Distinction between object and condition.

Where by a clause in the memorandum a person is appointed agent, secretary or managing director, the appointment cannot be regarded as one of the objects of the company, but it was held to amount to a condition within the meaning of s. 10, which could not be altered either by the company or by the Court [13]. The decision of Schwabe C. J. in the last cited case has

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1. Indian Mechanical G. Extracting Co. (supra); Govt. Stock Investment Co. [1892] 1 Ch. 597; Alliance Marine Assurance Co. [1892] 1 Ch. 300; Foreign & Colonial Govt. Trust Co. [1891] 2 Ch. 395; Oriental Telephone Co. [1891] W. N. 153.
2. Trust & Agency Co. of Australasia [1908] W. N. 229, 25 T.L.R. 61.
3. Cyclists' Touring Co. [1907] 1 Ch. 269; Boslom Bros. (1928) Ltd. [1935] Ch. 413, C. A.
4. Buckley, 10th ed. p. 20.
5. Indian Mechanical G. Extracting Co. [1891] 3 Ch. 538.
6. Parent Tyre Co. [1923] 2 Ch. 222.
7. Jewish Colonial Trust [1908] 2 Ch. 287.
8. Consett Iron Co. [1901] 1 Ch. 236.
9. D. & D. H. Fraser, Ltd. (supra).
10. Scientific Poultry Breeders' Assn. [1933] 1 Ch. 227 C. A. reversing the decision of Eve J. reported in [1932] 2 Ch. 212; Incorporated Dental Hospital v. Lord Advocate [1927] S. C. 400.
11. Spiers & Pond [1895] W. N. 135, 2 Mans. 596; see s. 13.
12. Jewish Colonial Trust (supra).
13. Mercantile Bank v. Coimbatore Mercantile Bank [1923] M.W.N. 568, 74 I.C. 966, 18 M. L. W. 304.

however been dissented from in a later case of the Bombay High Court by Beaumont C. J. and Rangnekar J.[1]; see notes to s. 10 (supra) and its new proviso.

In the Bombay case a clause in the memorandum of association provided that "the firm of Morarji Gokuldas & Co. or whatever member or members that firm may for the time being consist of shall be the agents of the company, so long as the said firm shall carry on business in Bombay or until they resign......," it was held that the original members of the firm having died and none of the present members of the firm having been ever partners with either of those two individuals, namely Morarji and Gokuldas, the present members of the firm do not come under the clause. "The argument of the appellant really seeks", observed Beaumont C. J. at p. 429, "to endow this firm with the attributes of a corporation having perpetual succession so far as concerns its relations with the company."

Procedure.

At the hearing of a petition for confirmation, the original memorandum and articles of association as well as the minute book must be made exhibits to the affidavit[2]. As to the sufficiency of advertisement of the special resolution see *Atlantic Patent Fuel Co.* [1917] W. N. 214, 253.

As to what is a valid special resolution under this section see the case noted below[3].

Unlimited and guarantee companies.

The High Court has jurisdiction to sanction an alteration of the memorandum of association of an unlimited company which has no capital[4], or a guarantee company having no share capital[5]; but if an unlimited company seeks to limit its liability, alters its memorandum and adopts the word "limited" in its name, it must register itself as a limited company before applying for sanction to the alteration[6].

Advertisement.

Unless a valid special resolution has been passed, the Court cannot confirm the proposed alteration of objects[3]. The Court will, except in special cases, require advertisement of orders made under this section[7].

For the mode of alteration of the form of constitution of a company which was in existence before the commencement of Act VI of 1882, see s. 267.

Sub-s. (3) applies to persons such as creditors or members of the company[8]. See s. 10 and notes.

Power of Court when confirming alteration.

13. The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

What the Court will consider.

All that the Court has to decide is whether the alteration is fair and equitable as between members of the company. It is not concerned with the wisdom or desirability of the proposed alteration, which is a question for the directors and members. The Court will refuse to sanction the alteration if the wishes of the majority of shareholders cannot be ascertained[9]. In the matter of alteration the Court is, however, bound to exercise a discretion having regard to the interests of the various persons, shareholders, creditors and others 1.

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[1] Ramkumar v. Sholapur Spinning & Weaving Co. [1934] B. 427, 36 Bom. L. R. 907.

[2] Omnium Investment Co. [1895] 2 Ch. 127.

[3] Blackburn P. Assurance Co. [1914] 2 Ch. 430.

[4] North of England &c. Assn. [1900] 1 Ch. 481.

[5] Monmouthshire &c. Society [1909] W. N. 6.

[6] Royal Exchange Buildings, Glassgow [1911] S. C. 1337 (Ct. of Sess).

[7] Lancaster Banking Co. [1897] W. N. 3, 75 L. T. 647; Copper Mines Tinplate Co. [1897] W. N. 20.

[8] Hearts & Oak &c. Co. (supra).

[9] Jewish Colonial Trust [1908] 2 Ch. 287.

The Court will not, as a general rule, allow a company to take large additional powers which it has not any reasonable intention of using in the near future, except under very special circumstances 2. The Court may also sanction the alteration with the addition of a clause to the effect that none of the additional objects should be undertaken except as subsidiary objects, unless with the sanction by a special resolution 3.

Exercise of discretion by Court.

14. The Court shall, in exercising its discretion under sections 12 and 13, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company may be expended in any such purchase.

Procedure on confirmation of the alteration.

15. (1) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the registrar, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

(2) Where the alteration involves a transfer of the registered office from one province to another, a certified copy of the order confirming such change shall be filed by the company with the registrar in each of such provinces, and each of such registrars shall register the same, and shall certify under his hand the registration thereof, and the registrar for the province from which such office is transferred shall send to the registrar for the other province all documents relating to the company registered or filed in his office.

(3) The Court may by order at any time extend the time for the filing of documents with the registrar under this section for such period as the Court thinks proper.

Sub-s. (2) is not in the English Act.

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1. Mercantile Bank v. Coimbatore Mercantile Bank (supra).
2. D. & D. H. Fraser Ltd. [1903] W. N. 73.
3. Re John Brown Ltd. [1914] W. N. 434, 112 L. T. 132.

Effect of failure to register within three months.

16. No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such registration is not effected within three months next after the date of the order of the Court confirming the alteration, or within such further time as may be allowed by the Court in accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months or such further time, as the case may be, become absolutely null and void :

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

This section is not in the English Act. But there penalty is provided if the order is not filed with the registrar.

Articles of Association.

Registration of articles.

17. (1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule,

and shall in any event be deemed to contain regulations identical with or to the same effect as regulation 56, regulation 66, regulation 71, regulations 78, 79, 80, 81 and 82, regulation 95, regulation 97, regulation 105, regulatian 107 and regulations 112, 113, 114, 115 and 116 contained in that Table :

Provided that [regulations 78, 79, 80, 81 and 82] shall not be deemed to be included in the articles of any private company except a private company which is the subsidiary company of a public company :

Provided further that regulation 107 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion thereof is charged against the income of the year, shall be shown in the profit and loss account, unless the company in general meeting shall determine otherwise.

(3) In the case of an unlimited company or a company

limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

Amendment—effect.

The words in *italics* in sub-s. (2) have been added by the Companies (Amendment) Act, 1936, and in the first proviso thereof for the word and figure "regulation 78" the words and figures within square brackets have been substituted by the Indian Companies (Amendment) Act II of 1938. The effect of the addition is that a company, whether limited by shares, by guarantee or unlimited, will be deemed to contain the following regulations of Table A of the Act, namely :—Regulations 56, 66, 71, 78, 79, 80, 81, 82, 95, 97, 105, 107 and 112 to 116 (both inclusive).

Regulation 56 says how a resolution at a general meeting is to be decided by votes on a show of hands or by poll. This regulation should be read with the provisions of cl. (c), sub-s. (1) of the new section 79 which has replaced the old one.

Regulation 66 provides that the instrument of proxy or power of attorney must be deposited at the registered office of the company not less than 72 hours before the time of the meeting.

Regulation 71 provides that business of the company shall be managed by the directors.

Regulations 78 to 82 make provisions for the rotation of directors.

Regulation 95 says that the company in general meeting may declare dividends, but not exceeding the amount recommended by the directors.

Regulation 97, as amended by the Companies (Amendment) Act, 1936, provides that no dividend shall be paid otherwise than out of profits of the year or any other undistributed profits.

Regulation 105 relates to provision for inspection of books and accounts of the company by its members.

Regulation 107 as amended by the Companies (Amendment) Act, 1936 relates to what the profit and loss account of the company should show.

Regulations 112 to 116 relate to notice to be given to a member or his legal representative.

The first proviso as amended by Act II of 1938 states that in the case of a private company, which is not the subsidiary company of a public company, the regulations 78 to 82 shall not be deemed to be included in its articles of association.

The second proviso states what regulation 107 shall be deemed to include.

Constructive notice of Act and articles.

A person dealing with a company must be taken to have read the Act as well as the articles of association and will be deemed to have had constructive notice of their contents 1. So, where the articles required that all deeds &c. should be signed by the managing director, the secretary and the working director on behalf of the company, but the services of the managing director not being available as prosecution against him by the company was pending,

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1. Kotla Venkataswamy v. Chinta Ramamurthy [1934] M. 579, 67 M. L. J. 327, 151 I. C. 932 ; Charnock Collieries Co. v. Bholanath [1912] 39 Cal. 810, 16 I. C. 976.

a deed of mortgage was executed by the secretary and the working director only, it was held that the mortgage could not be enforced as the illegality appeared on the face of the bond, although the loan under the mortgage was applied for the purposes of the company 1.

Articles are subordinate to memo.

The articles are subordinate to the memorandum of association. Any clause in the former at variance with the latter is to that extent inoperative 2. The articles cannot modify the memorandum of association in any of the particulars required by the Act to be stated in the memorandum 3, which is the area beyond which the company cannot go; but inside that area the shareholders may make such regulations for their own government as they think fit 4. If a thing is forbidden by the memorandum, it cannot be done; if not, it is immaterial that the change quite alters the composition of the company 5. Lord Selborne said in *Dent's case* 6: "It is quite certain that if there be found anything in the articles limiting liability of the shareholders in a way inconsistent with the memorandum—anything tending to reduce the liability of the shareholders thereby prescribed—it is simply void." For further cases see notes to s. 21.

Their respective functions.

The articles cannot also extend the objects defined in the memorandum of association. Lord Justice Bowen thus distinguished the respective functions of the memorandum and the articles of association: "The memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated. They are conditions introduced for the benefit of the creditors and the outside public, as well as the shareholders. The articles are the internal regulations of the company" 7. They are however to be read together; the articles may then explain or amplify the memorandum 8.

Articles—how far a contract.

The articles establish a contract between the members and the company 9, and although there is no contract in terms between each individual member and every other 10, the articles regulate their rights *inter se* 11. But this contract is not for the benefit of strangers or even of members in some other capacity, for the articles are not contracts with outsiders 12. A statement in the articles that a particular person shall be the secretary, manager or other officer of the company will not amount to a contract with him 12; but where on

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1. Kotla Venkataswamy v. Chinta Ramamurthy (supra); see also John Shaw & Sons (Salford) Ltd. v. Shaw [1935] 2 K. B. 113 C. A.
2. Ashbury v. Watson [1885] 30 Ch. D. 376 C. A.; Baglan Hall Colliery Co. [1870] 5 Ch. App. 346, where Lord Justice Giffard said that if there were contradictions between the articles and the memorandum, the former must give way.
3. Guinness v. Land Corporation of Ireland (infra).
4. Ashbury Rail Co. v. Riche [1875] L. R. 7 H. L. 653.
5. Andrews v. Gas Meter Co. [1897] 1 Ch. 361.
6. [1873] 8 Ch. App. 768.
7. Guinness v. Land Corporation of Ireland [1882] 22 Ch. D. 349.
8. London Financial Association v. Kelk [1882] 26 Ch. D. 107.
9. Borland's Trustee v. Steel Brothers & Co. [1901] 1 Ch. 279; *exp.* Beckwith [1898] 1 Ch. 324.
10. Salmon v. Quin & Axtens [1909] 1 Ch. 311; Oakbank Oil Co. v. Crum [1883] 8 App. Cas. 65.
11. Per Lord Herschell in Welton v. Saffery [1897] A. C. 299, 314; see also Wood v. Odessa Water Works Co. [1889] 42 Ch. D. 636 at p. 642.
12. Eley v. Positive &c. Assurance Co. [1876] 1 Ex. D. 20, 33 L. T. 743; Browne v. La Trinidad [1888] 37 Ch. D. 1; Hickman v. Kent Sheep Breeders' Assn. [1915] 1 Ch. 881; see also Boston Deep Sea Fishing Co. v. Ansell [1888] 39 Ch. D. 339.

the footing of the articles the directors are employed by the company and accept office, the terms of the articles impliedly form a contract between the company and the directors [1]. A provision in the articles in favour of a promoter that the preliminary expenses shall be paid by the company, gives to the promoter no right of action against the company [2]. Articles cannot be considered as a contract between the company and a third person, *e.g.*, a vendor [3]. Where a company by its articles appointed a firm as its managing agents who acted as such pursuant to an agreement the terms of which were scheduled to the articles, but the agreement was not executed, and the company claimed back the moneys drawn out by the firm as their remuneration as well as the preliminary expenses, it was held that the company was not entitled to recover the money, although the firm could not sue for and recover it by any course of law [4].

Duties of persons dealing with a company.

Where a company is regulated by an Act of the legislature or by a deed of settlement or memorandum and articles registered in some public office, persons dealing with the company are bound to read the Act or the registered documents and to see that the proposed dealing is not inconsistent with them [5]; but they are not bound to do more [5]. They need not inquire into the regularity of the proceedings—what Lord Hatherley called the "indoor management." They are entitled to assume that all is being done regularly [5]. Thus where the articles give power to borrow with the sanction of a general meeting, a lender need not inquire whether such sanction has in fact been obtained [5]. If there is a managing director and there is authority in the articles for the directors to delegate their powers to him, a person dealing with him *bona fide* may assume that he has power to do what he purports to do, provided that it is within the company's objects [6]; so too in the case of a mortgagee taking a mortgage from a company executed by such a person [7].

On the same principle a person dealing with a company is entitled to assume that the *de facto* directors are directors *de jure*, whether they are properly appointed or not [8]. But a person who has notice of the irregularity cannot claim the benefit [9], nor does the rule apply where the requisite signatures are forged [10].

A person dealing with a company may also assume that the articles registered have been duly adopted by the company [11]. The company as well as the person dealing with it can equally rely upon the articles [8].

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[1] Swabey v. Port Darwin Gold Mining Co. [1889] 1 Meg. 385; *exp.* Beekwith [1898] 1 Ch. 324; see Dale & Plant [1889] 61 L. T. 206; Isaac's case [1892] 2 Ch. 158; Salisbury Jone's case [1894] 3 Ch. 356.

[2] Rotherham Alum & Chemical Co. [1883] 25 Ch. D. 103.

[3] Pritchard's case [1873] 8 Ch. App 956 at p. 960; Isaac's case [1892] 2 Ch. 158.

[4] Sree Minakshi Mills v. Callianjee [1935] M. 799, 68 M. L. J. 510, 156 I.C. 570 distinguishing Bodega Co. [1904] 1 Ch. 276.

[5] Royal British Bank v. Turquand [1856] 6 E. & B. 327; Mahony v. East Holyford Mining Co. [1875] L. R. 7 H. L. 869; Duck v. Tower Galvanising Co. [1901] 2 K. B. 314; Charnock Collieries v. Bholanath [1912] 39 Cal. 810; Khulna Loan Co. v. Jahir Goldar [1914] 24 I. C. 209.

[6] Biggerstaff v. Rowatt's Wharf [1896] 2 Ch. 93.

[7] County of Gloucester Bank v. Rudry Merthyr Colliery Co. [1895] 1 Ch. 629, 633.

[8] Mahony v. East Holyford Mining Co. [1875] 7 H.L. 869; County Life Assurance Co. [1870] 5 Ch. App. 288; Bank of Syria [1900] 2 Ch. 272, on appeal [1901] 1 Ch. 115.

[9] Howard v. Patent Ivory Manufacturing Co. [1888] 38 Ch. D. 156.

[10] Ruben v. Great Fingall Consolidated [1906] A. C. 439.

[11] Muirhead v. Forth & North Sea &c. Assn. [1894] A. C. 72 at p. 78.

A person dealing with a company must take the articles to be such as appear at the office of the registrar of companies to be in force. If the directors propose to do something in excess of their powers thereunder, he is not entitled to assume that their powers have been extended by a special resolution ; for such a resolution, if passed, would be registered 1.

In this connection the observations of Lord Haldane in *Pacific Coast Coal Mines* v. *Arbuthnot* 2 are most instructive : "No doubt where some act, such as the granting of an obligation in the course of its business, is put by the constitution of the company within its power and certain formalities of administration are prescribed by the articles of association which for domestic purposes regulate the duties of the directors to the shareholders, the mere failure to comply with a formality, such as a proper appointment or the presence of a quorum of directors, will not affect a person dealing with the company from outside and without knowledge of the irregularity. He is presumed to know the constitution of the company, but not what may or may not have taken place within doors that are closed to him. Lord Hatherley's judgment in *Mahony* v. *East Holyford Mining Co.* [(1875) 7 H. L. 869] is for practitioners in company law the classical exposition of this principle. But the case stands quite otherwise, when the act is one which has not by the constitution of the corporation been put within its power excepting on the fulfilment of a condition. In that event, the persons dealing with the corporation are bound to ascertain whether the condition has been fulfilled."

Where the articles provide for the borrowing powers to be exercised in a particular manner, then in the absence of an express power delegating such powers to the directors, the latter cannot exercise those powers 1. The articles cannot authorize the company to do anything which is expressly or impliedly forbidden by the Act, *e.g.*, to pay dividends out of capital 3, nor can they take away from the company or its members any rights conferred by the Act 4. A clause in the articles of association exempting directors from liability except for fraud will protect them from a claim for negligence 5. But see the new s. 86-C.

Scope of articles.

Where the resolutions of a company and its directors are inconsistent with the provisions of the articles, the company may be restrained from acting upon them 6.

A clause in the articles cannot be used to defeat the rules of Court as to discovery and inspection of documents 7.

Stamp.

As to the stamp on articles of association see Appendix—Stamp Duty. The stamp must be affixed before or at the time of signatures 8.

Application of Table A.

18. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the

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1. National Coal Co. v. Gyan Ranjan [1927] 45 C. L. J. 96.
2. [1917] A. C. 607 P. C. at p. 616.
3. Mac Dougall v. Jersey Imperial Hotel Co. [1864] 2 H. & M. 528.
4. Peveril Gold Mines [1898] 1 Ch. 122.
5. Brazilian Rubber Estates [1911] 1 Ch. 425.
6. Salmon v. Quin & Axten, Ltd. [1909] 1 Ch. 311 ; see also Automatic Self-cleansing Filter Syndicate v. Cunninghame [1906] 2 Ch. 34.
7. Curtland v. Houston &c. Navigation Co. [1912] W.N. 110.
8. S. 17, Stamp Act, 1899.

same manner and to the same extent as if they were contained in duly registered articles.

Table A is a part of the Act.

Table A is a part of the Act. So, if a company adopts it or some analogous provisions as its regulations, they will not be invalid even if they are apparently at variance with the sections of the Act [1]. They may be looked at showing the views of the legislature with regard to matters mentioned in them [2]. Where Table A is adopted, power should be taken to fix the minimum subscription and to pay underwriting commission, as these powers are not to be found in the new or the old Table A. Where Table A or some of its provisions are sought to be excluded, it should be done in clear language [3].

Application of Table A.

Where the articles of a company are neither registered along with the memorandum of association, nor subsequently passed in a manner provided by the law, they cannot take effect as articles of association so as to replace the general provisions of Table A [4]. But if by a long course of conduct the shareholders have put forward such articles as embodying regulations by which they were prepared to be bound, they were binding on the company [5]. The Court may also act upon a distribution of assets, not in strict accordance with the articles, if there has been a general adoption of the method of distribution [6].

Adoption of articles.

When an article is one which the company has power to adopt, the fact that there has been a defect in the procedure of its adoption will not prevent a person dealing with the company on the faith of the article from insisting that it shall be treated as binding on the company, and the company can equally insist upon such articles where they have been made the basis of a contract with a stranger [7].

Where Table A does not apply.

The regulations of Table A will not apply to a company registered under Part VII of the Act, unless such regulations are adopted by a "special resolution" [8], nor to a company registered before 1st April, 1914. Companies existing at the commencement of the Act which have adopted as their articles either the regulations contained in Table B in the Schedule of Act XIX of 1857 or those contained in Table A of the First Schedule of Act VI of 1882 will still be governed by those regulations [9]. These are printed in the Appendix.

Form and signature of articles.

19. Articles shall—

(*a*) be printed;

(*b*) be divided into paragraphs numbered consecutively; and

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[1] Lock v. Queensland &c. Co. [1896] A.C. 461. See also New Balkis Eersteling v. Rand Gold Mining Co. [1904] A.C. 165.

[2] Re Pyle Works [1890] 44 Ch.D. 534, 571; Barned's Banking Co. [1867] 3 Ch. App. 105, 113-14.

[3] Fisher v. Black & White Publishing Co. [1901] 1 Ch. 174 C A.

[4] Prayan Prasad v. Gaya Bank & Trades Assn. [1931] P. 44, 10 Pat. 249, 130 I.C. 534.

[5] Ho Tung v. Man On Insurance Co. [1902] A.C. 232 P.C.; Kunj Kishor v. Buldeo Mills [1914] 36 All. 416.

[6] Beeston Pneumatic Tyre Co. [1898] W.N. 34, 14 T.L.R. 338; North-West Argentine Ry. Co. [1900] 2 Ch. 882.

[7] Muirhead v. Forth & North Sea Assn. [1894] A. C. 72 at p. 78.

[8] S. 266, cl. (ii) (a).

[9] S. 290.

(c) be signed by each subscriber of the memorandum (*who shall add his address and description*) of association in the presence of at least one witness who must attest the signature.

In cl. (c) the words in italics have been inserted by the Companies (Amendment) Act, 1936.

The directors have no power to remit or accept surrender of shares of those who signed the articles 1.

As to who is competent to attest the signature, see notes to s. 9.

Every member is entitled to get, on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and articles of association 2.

For the stamp duty to be paid on the articles of association see Art. 10 of the Stamp Act as amended by the local Acts. (See Appendix—"Stamp Duty.")

Alteration of articles by special resolution.

20. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, extend to altering any provisions in Table B annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Power of altering articles is statutory.

A company cannot deprive itself of the statutory power to alter its articles of association 3, either by a statement in the articles 4 or by a contract 5 that they shall not be altered 6. A thing which is in the articles, but not in the memorandum of association, may be altered 3. Any new article may be adopted which could have been lawfully included in the original articles 7, provided that the alteration was made *bona fide* for the benefit of the company as a whole 8. "The power," said Lindley, M. R., "thus conferred on corporations to alter the regulations is limited only by the provisions contained in the company's memorandum of association. It must be exercised for the benefit of the company

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1. London &c. Consolidated Coal Co. [1877] 5 Ch. D. 525.
2. S. 25.
3. Andrews v. Gas Meter Co. [1897] 1 Ch. 361 C.A.; Chithambaram v. Krishna [1910] 33 Mad. 36.
4. Walker v. London Tramways Co. [1879] 12 Ch.D. 705; Allen v. Gold Reefs of West Africa [1900] 1 Ch. 656.
5. Punt v. Symons & Co. [1903] 2 Ch. 506; Allen v. Gold Reefs (supra).
6. Malleson v. National Insurance Corporation [1894] Ch. 200.
7. Sidebottom v. Kershaw, Lees & Co. [1920] 1 Ch. 154; see also Allen v. Gold Reefs (supra) and Brown v. British Abrasive Wheel Co. [1919] 1 Ch. 290.
8. British Equitable Assurance Co. v. Bailey [1906] A. C. 35, 42; Sidebottom v. Kershaw, Leese & Co. (supra).

as a whole and it must not be exceeded. These conditions are always implied and are seldom, if ever, expressed. But if they are complied with, I can discover no ground for judicially putting any other restrictions on the power conferred by the section than those contained in it" 1. In this case the Court of Appeal held that the introduction of a lien clause by altering the articles was valid though in some sense it operated retrospectively.

Where the articles provide for matters which need not, under the previous sections, be contained in the memorandum and which are not either expressly or impliedly dealt with therein, the portions of the articles so dealing with such matters cannot be treated as part of the memorandum, and can be altered by a special resolution 2.

Court's jurisdiction.

The Court has no jurisdiction to rectify the articles of association, even if they do not accord with what is proved to have been the concurrent intention of the signatories at the moment of the signatures 3.

Amendment by special resolution.

If a special resolution is not passed, the articles will not be validly altered 4. A company can pass a special resolution altering the articles conditionally upon the happening of some other event, *e. g.*, confirmation by the Court of reduction of capital previously resolved upon 5. If the directors issue notice to the effect that alterations will be made in respect of certain articles while there are equally important alterations in respect of other articles, it cannot be said that the shareholders have sufficient notice of alteration in respect of the latter. The notice should give sufficiently full and frank disclosures of the facts and effects of the resolutions 6. Any alterations in the articles of association cannot bind the members from whom notice of the meeting, at which the alteration was made, was withheld. For, the articles form a contract between a member and the company, and one party to a contract cannot add terms to the contract without the knowledge and consent of the other party 7. Where a company amends its articles by special resolution without mentioning in the notice under s. 81 (*post*) that the question of amendment of the articles was to come up for decision in the meeting, the irregularity is fatal to the proceedings and makes the amendment invalid and *ultra vires* 8.

As to "special resolution," see s. 81 *post* and notes thereto.

Limitation of alteration.

The articles must be altered in good faith and not so as to give an unfair advantage to a majority of the shareholders 9. This is the only limitation in the power to alter the articles of association 10.

A company has power under this section to introduce, by altering the articles, a provision that shareholders, who carry on business in competition with the company, may

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1. Allen v. Gold Reefs of West Africa (supra).
2. Chithambaram v. Krishna [1910] 33 Mad. 36.
3. Scott v. Frank F. Scott (London), Ltd. [1940] Ch. 794, C. A. approving Evans v. Chapman [1902] 86 L. T. 381.
4. Malleson v. National Insurance Corpn. [1894] 1 Ch. 200; Railway Sleepers Supply Co. [1885] 29 Ch. D. 204.
5. Australian Estates Co. [1910] 1 Ch. 414, 425.
6. Narayanlal v. Maneckji Petit Manfg. Co. [1931] B. 354, 33 Bom. L. R. 556.
7. Madhava v. Canara Banking Corporation [1940] 2 M. L. J. 973, [1941] M. W. N. 28.
8. Gulab Singh v. Punjab Zemindara Bank [1940] L. 243.
9. Menier v. Hooper's Telegraph Works [1874] 9 Ch. App. 350; Punt v. Symons (supra); Marshall's Valve Gear Co. v. Manning, Wardle & Co. [1909] 1 Ch. 267; Neal v. City of Birmingham Tramways [1910] 2 Ch. 464.
10. Consolidated S. R. M. Deep [1909] 1 Ch. 491; British America Nickel Corpn. v. O'brien [1927] A. C. 369 at p. 371.

be required to transfer their shares to a nominee of the directors at a price certified by the auditors to be their fair value, provided that the alteration is for the benefit of the company as a whole[1]; if otherwise, the new provision is invalid[2].

The section cannot be used to oppress or defraud a minority of the shareholders or so as to violate any statutory provision or principle of law[3]. A majority will not be permitted by the Court to commit fraud on the minority[4]. No majority can, even by altering the articles retrospectively, affect to the prejudice of non-consenting shareholders their rights under a previous contract[5].

Alterations affecting preference shares.

In the case of the issue of preference shares and the like, there is generally outside the articles a contract conferring special rights. If the original articles do not contain the power to issue preference shares, the company may take the power by special resolution[6].

Rights which have their origin in a contract outside the articles, the terms of which contract are found in or referred to in such articles, can be altered by such alteration of the articles, unless it is proved that one of the terms of such contract was that such rights should not be affected[7]. But the passing of a special resolution inconsistent with an existing article will not however be effective, unless the special resolution has been passed at previous meetings altering that article[8].

Alteration in the case of existing company.

A company existing before the commencement of the present Act may adopt the Table A of this Act as its regulations by passing a special resolution to the following effect: "The existing regulations of the company are hereby rescinded and in lieu thereof the regulations contained in Table A of the Indian Companies Act, 1913 shall be the regulations for the management of the company subject to the modifications hereinafter set forth."

Alterations in breach of contract.

A company will not be allowed to alter its articles in breach of contract with an outsider[9]; but it is otherwise if the outsider has taken his contract subject to the risk[10]. As regards contracts between a company and its members respecting their shares, it should not be assumed that the contract involves, as one its terms, an article which is not to be altered[11]. A shareholder must be taken to know that one of the incidents of membership is that the company may, by adopting the proper method *bona fide*, alter its articles in a way which may prejudicially affect his interest; and provided that the alteration in the articles is not inconsistent with the objects set out in the memorandum of association and is *bona fide* made in the interest[12] of the company, the shareholders will be bound by such alteration. But a special contract may be made with the company in the terms

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1. Sidebottom v. Kershaw, Leese & Co. (supra).
2. Dafen Tinplate Co. v. Llanelly Steel Co. [1920] 2 Ch. 124.
3. Peveril Gold Mines [1898] 1 Ch. 122; Payne v. Cork Co. [1900] 1 Ch. 308.
4. Normandy v. Ind, Coope & Co. [1908] 1 Ch. 84.
5. Per Rigby L. J. in James v. Buena Ventura Syndicate [1896] 1 Ch. 456 at p. 466; but see Allen v. Gold Reefs of W. Africa (supra).
6. Andrews v. Gas. Meter Co. (supra); see Stewart Precision Carburettor Co. [1912] W. N. 100, 28 T. L. R. 335.
7. Chidambaram v. Krishna (supra).
8. Imperial H. Hotel Co. [1883] 23 Ch. D. I, C. A.
9. British Murac Syndicate v. Alperton Rubber Co. [1915] 2 Ch. 186.
10. British Equitable Assurance Co. v. Bailey [1906] A. C. 35.
11. Per Lord Lindley, M. R. in Allen v. Gold Reefs of W. Africa [1900] 1 Ch. 656, 673.
12. Shuttleworth v. Cox Bros. & Co. [1927] 2 K. B. 9 C. A.

of or embodying one or more of the articles. In that case, if an alteration of the articles so embodied is inconsistent with the real bargain between the parties, the contractee, even though a shareholder, will not be bound; for a company cannot break its contracts by altering its articles of association [1]. But a company may alter its articles so as to vary a contract with an outsider, if the latter has made the contract subject to the risk of the articles being altered [2]. A company cannot be precluded from altering its articles of association thereby giving itself power to act upon the provisions of the altered articles, but so to act may nevertheless be actionable if it is contrary to a stipulation in a contract validly made before the alteration [3]. "The right to alter the articles being inherent, if it is desired by contract to give an employee or a third person a right of action if there should be an alteration of the articles which causes damages to him, I think it is very desirable to express such a term in clear language" [4].

Other alterations.

Where the articles, as altered, provided that the shares of any member who became bankrupt should be sold to certain persons at a certain price, and a member became bankrupt and his trustee claimed that he was not bound by the altered articles, it was held that the articles, as altered in the proper way, were a contract between the other members and the bankrupt, and his trustee was bound [5].

By sub-s. (1) a company may, subject to the provisions of the Act and to the conditions contained in the memorandum, alter or add to the articles. By the general law this power must be exercised *bona fide* for the benefit of the company. But it is for the shareholders and not for the Court to say whether an alteration of the articles is for the benefit of the company, provided that it is not of such a character as that no reasonable man can so regard it [6].

Adoption of articles by long acquiescence.

Although a special resolution is the statutory mode of enacting articles of association, the adoption of certain articles by a company may be proved by long course of acquiescence, as pointed out by Lord Davey [7]: "It appears that these articles have been registered (without signature) and have been published and put forward as the company's articles and have been acted on, amended or added to by the shareholders and the company's business has been conducted under the regulations contained therein for 19 years without any objection and the company on the record says that these articles are its articles. Their Lordships think that in these circumstances they are entitled to draw the inference that all the shareholders have accepted and adopted the articles as the valid and operative articles of the company. The articles stand on a very different footing from the memorandum and are in the power of the shareholders themselves." But see *Pacific Coast Coal Mines v. Arbuthnot* [8].

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[1] Hari Chandana v. Hindustan C. I. Society [1925] 52 Cal. 239 following Allen v. Gold Reefs (supra); Bailey v. British Equitable Assurance Co. [1904] 1 Ch. 374 and British Murac Syndicate v. Alperton Rubber Co. (supra).

[2] British Equitable Life Assurance Co. v. Bailey [1906] A. C. 35.

[3] Southern Foundries (1926) Ltd. v. Shirlaw [1940] A. C. 701, per Lord Porter.

[4] Ibid, per Lord Maugham (dissentient) at p. 713.

[5] Borland's Trustee v. Steel Brothers [1901] 1 Ch. 279.

[6] Shuttleworth v. Cox Bros. & Co. [1927] 2 K. B. 9 C. A. (Dictum of Peterson J. in Dafen Tinplate Co. v. Llanelly Steel Co. [1920] 2 Ch. 124, 140 disapproved).

[7] Ho Tung v. Man On Insurance [1902] A. C. 232 P. C.

[8] [1917] A. C. 607 P. C.

How alteration affects contracts.

Rights, which have their origin in a contract outside the articles, the terms of which contract are found or referred to in such articles, can be altered by such alteration of the articles, unless it is proved that one of the terms of such contract was that such rights should not be affected by an alteration of the articles [1]. The articles can be altered retrospectively unless such alteration will cause a breach of contract entered into by the company [2].

New articles.

The Act does not contemplate new articles of association, and where it purports to be so, it is nothing more than a record of special resolution and as such does not require to be stamped [3].

Clerical errors and mistakes.

Clerical errors in the articles should be set right by a special resolution and not by an action for rectification [4]. The Court has no jurisdiction to rectify the articles on the ground of mistake, for they have a statutory operation [4].

Effect of alteration in memorandum or articles.

20-A. *Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company :*

Provided that this section shall not apply in any case where the member agrees in writing either before or after the alteration is made to be bound thereby.

This section has been inserted by the Companies (Amendment) Act, 1936. It reproduces *verbatim* s. 22 of the English Act of 1929.

This section provides that without the consent of a member he cannot be asked to subscribe for more shares, and his liability in respect of existing shares cannot be increased by amending the memorandum or articles.

General Provisions.

Effect of memorandum and articles.

21. (1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, his heirs, and legal representatives, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

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1. Chithambaram v. Krishna [1910] 33 Mad. 36.
2. Allen v. Gold Reefs (supra).
3. New Egerton Woollen Mills [1900] 22 All. 131.
4. Evans v. Chapman [1902] W. N. 78, 18 T. L. R. 506.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Notice.

The members are deemed to be aware of the contents of the memorandum and the articles of association [1] and to understand their meaning [2]. But in certain circumstances where they are induced to become members by fraud, this rule does not apply [3].

Outsiders dealing with a company must also be taken to have read the Act and the memorandum and articles of association of the company he is dealing with and thus to have had constructive notice of their contents [4]; but they are not bound to make enquiries and may assume that the company's internal management has been regular [5], and that the provisions therein contained have been complied with by the company's officers. Where by the articles the directors were directed forthwith to execute by affixing the seal of the company to the scheduled agreement entered into with a firm, strangers to the company are entitled to assume that, that direction has been carried out and that as a consequence the firm is entitled to act as managing agents with the powers conferred by the scheduled agreement [6].

Memorandum.

The memorandum of association irrevocably binds a subscriber thereof to contribute the proportion of the capital for which he subscribes; but it does not bind him irrevocably as regards matters not required by the Act to be stated therein [7]. A person who subscribes for preference shares may take an equivalent amount of ordinary shares instead [7].

Respective spheres of memo. and articles.

The memorandum of association, as Lord Cairns observes, "is as it were the charter, and defines the limitation of the powers of a company to be established, under the Act. With regard to the articles of association, those articles play a part subsidiary to the memorandum of association. They accept the memorandum of association as the charter of incorporation of the company and so accepting it, the articles proceed to define the duties, the rights and powers of the governing body as between themselves and the company at large, and the mode and form in which the business of the company is to be carried on, and the mode and form in which changes in the internal regulations of the company may, from time to time, be made. With regard therefore to the memorandum of association, if you find anything which goes beyond that memorandum, or is not warranted by it, the question will arise whether that which is done is *ultra vires*, not only of the directors of the company, but of the company itself. With regard to the articles of association, if you find anything which, still keeping within the memorandum of association, is a violation of the articles of asso-

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1. Peel's case [1867] 2 Ch. App. 674; Sewell's case [1868] 3 Ch. App. 131; Campbell's case [1873] 9 Ch. App. 1, 22.
2. Oakbank Oil Co. v. Crum [1882] 8 App. Cas. 65.
3. Central Rail Co. v. Kisch [1867] 2 H. L. 99 at p. 123; Downes v. Ship [1868] 3 H. L. 343.
4. Ernest v. Nicholls [1857] 6 H. L. C. 401, 419; Campbell's case (supra); Mahony v. East Holyford Mining Co. [1875] 7 H. L. 869; Venkataswami v. Ramamurty [1934] M. 579, 67 M. L. J. 327; Charnock Collieries Co. v. Bholanath [1912] 39 Cal. 810.
5. For cases see notes to S. 17 and Premier Industrial Bank v. Carlton Manufacturing Co. [1909] 1 K. B. 106.
6. Sree Minakshi Mills v. Callianjee [1935] M. 799, 68 M. L. J. 510, 156 I. C. 570.
7. Duke's case [1876] 1 Ch. D. 620.

ciation, or in excess of them, the question will arise whether that is anything more than an act *extra vires* of the directors, but *intra vires* the company" [1]. Then again, "of the internal regulations of the company, the members of it are absolute masters, provided they pursue the course marked out in the Act, that is to say, holding a general meeting, and obtaining the consent of the shareholders, they may alter those regulations from time to time; but all must be done in the way of alteration subject to the conditions contained in the memorandum of association...... The memorandum of association is, as it were, the area beyond which the action of the company cannot go; inside that area the shareholders may make such regulations for their own government as they think fit" [2]. But except in respect of such matters as must, by statute, be provided for by the memorandum of association, the latter is not to be regarded as the dominant document, but is to be read in conjunction with the articles. In this particular case, however, their Lordships of the Judicial Committee were unable to read the two documents together and held that as the reserve fund was created by the memorandum for the benefit and security of the preference shareholders and as the provisions of the memorandum with regard to it were neither ambiguous, nor in need of being supplemented, article 119 did not empower the directors to apply the said fund for the purposes therein mentioned [3].

Articles.

The articles constitute a contract not merely between the company and the members, but also between each individual member and every other member [4]. As between the company and its members the contract is in respect of their ordinary rights as members [5]. A contract contained in the articles cannot be enforced by a person who is not a member [6], or even by a member except in so far as it relates to his position as a member [7]. Even if a particular article is wide enough to make it apply to a dispute between the company and a member in his capacity of a director, this section does not give contractual force to the article in reference to such a dispute [8]. "In *Hickman v. Kent Sheep Bredeers' Assn.* 5 it was said: 'An outsider to whom rights purport to be given by the articles in his capacity as such outsider, whether he is or subsequently becomes a member, cannot sue on those articles treating them as contracts between himself and the company to enforce those rights. Those rights are not part of the general regulations of the company applicable alike to all shareholders and can only exist by virtue of some contract between such person and the company'......No right merely purporting to be given by an article to a person, whether a member, or not, in a capacity other than that of a member, as, for instance, as solicitor, promoter, director, can be enforced against the company" [9]. The rights arising out of such contracts can ordinarily be enforced through the company [10].

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[1] Ashbury Ry. Carriage &c. Co. v. Riche [1875] L. R. 7 H. L. 653 at p. 668.

[2] Ibid, at p. 671.

[3] Angostura Bitters Ltd. v. Kerr [1933] A. C. 550, P. C., [1934] P. C. 89.

[4] Eley v. Positive Assurance Co. [1876] 1 Ex. D. 20; Salmon v. Quin & Axtens [1909] 1 Ch. 311; Gulab Singh v. Punjab Zemindara Bank [1940] L. 243, 190 I. C. 819.

[5] Maneklal v. Suryapur Mills [1928] B. 252, 52 Bom. 477, 30 Bom. L. R. 549; Hickman v. Kent Sheep Breeders' Assn. [1915] 1 Ch. 881; in this case all previous decisions were discussed. See also Rameswar v. Calcutta Wheat & Seed Assn. [1938] C. 89, 42 C. W. N. 161.

[6] Browne v. La Trinidad [1887] 37 Ch. D. I.

[7] Eley v. Positive Assurance Co. (supra); Browne v. La Trinidad (supra).

[8] Beattie v. E. & F. Beattie, Ltd. [1938] Ch. 708 C. A.

[9] Ibid, where Sir Wilfrid Green quotes the passage with approval.

[10] MacDougall v. Gardiner [1875] 1 Ch. D. 13; Burland v. Earle [1902] A. C. 83.

Anything in the articles which is inconsistent with the provisions of the Act is void 1. In the last noted case at p. 315 Lord Herschell observed as follows: "The articles constitute a contract between each member and the company and there is no contract in terms between the individual members of the company; but the articles do not any the less, in my opinion, regulate their rights *inter se.* Such rights can only be enforced by or against a member through the company or through the liquidator representing the company; but I think that no member has, as between himself and another member, any rights beyond that which the contract with the company gives."

Where the articles are not valid for want of registration, the company may be estopped from raising the plea of their invalidity against holders of hundis in due course 2.

Social contract.

The memorandum and the articles embody only the social contract between the shareholders *inter se,* and possibly between the shareholders and directors and do not constitute any contract between the company and its promoters 3.

Purpose of memo. & articles.

The purpose of the memorandum and articles is to define the position of the shareholder as shareholder, and not to bind him in his capacity as an individual 4. No article can constitute a contract between the company and a third person 5. No right merely purporting to be given by an article to a person, whether member or not, in a capacity other than that of a member, *e. g.*, as solicitor, promoter or director can be enforced against the company 6. A memorandum of association must be construed in its literal meaning 7.

"Debt due."

Sub-s. (2). Under this sub-section the liability of the shareholders in respect of the balance due on their shares is undoubtedly a debt due from them to the company, the debt accruing due from the time when their liability commenced, that is, from the time when they first took up their shares. This liability is not however enforceable against the shareholders until a valid notice has been given to them in accordance with the articles 8. Though under this sub-section any money payable by a member becomes a debt when it is due under the articles or the memorandum, still the money does not become due merely because signatories of the memorandum or articles have undertaken to pay for the shares subscribed by them. There is a distinction between money which is due and money which is presently due and it is only money which is presently due which can be described as a debt 9. When there was no term by which the signatories were to pay the amount on a particular date, nor was any date fixed by the board of directors, but the shares were forfeited, it was held that the amount was not presently due and hence the shares were not liable to forfeiture 9.

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1. Welton v. Saffery [1897] A. C. 299.
2. Kunj Kishore v. Baldeo Mills [1914] 36 All. 416.
3. Ahmedabad Jubilee S. & M. Co. v. Chhotalal [1907] 10 Bom. L. R. 141.
4. Bisgood v. Henderson's T. Estates [1908] 1 Ch. 743.
5. Pritchard's case [1873] 8 Ch. App. 956; Famatina Development Corpn. [1914] 2 Ch. 271.
6. Hickman v. Kent &c. Assn. (supra).
7. Cotman v. Brougham [1918] A. C. 514.
8. Pabna Dhanabhander Co. v. Foezuddin [1932] C. 716, 59 Cal. 1186, 36 C. W. N. 589.
9. Vishwanath v, Holyland Cinetone, Ltd. [1939] A. 739, [1939] A.L.J. 950.

In *Alexander v. Automatic Telephone* Co.[1] some directors sought to compel others to pay on their shares in the same proportion as had been paid by shareholders who were members of the public, it was held that the directors were not legally bound to make the payments, but that the Court of Chancery would compel them to pay upon the ground that they had been acting in contravention of the trust which had been reposed on them as directors of the company.

Registration of memorandum and articles.

22. The memorandum and the articles (if any) shall be filed with the registrar for the province in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

Date of registration.

The registration of a company takes place when the memorandum and articles are accepted and retained by the registrar[2], and not on the date on which his signature is written[2]. The registrar will decline registration if he consider them to be improperly stamped[3]. If the certificate of registration be not forthcoming it may be proved *aliunde*[4].

Function of registrar.

The function of the registrar is quasi-judicial[5] and the Court will not interfere with his decision unless it is clearly satisfied that he has come to a wrong decision[6]. If he wrongly refuse registration, a mandamus may issue under s. 45 of the Specific Relief Act to compel registration.

For the fees payable for registration see Table B in the First Schedule.

Effect of registration.

23. (1) On the registration of the memorandum of a company, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in the Act.

In England a company created a corporation under the Companies Acts is not thereby created a corporation with Common Law rights[7].

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[1] [1900] 2 Ch. 56.
[2] Jubilee Cotton Mills [1923] 1 Ch. 1.
[3] Queen v. Registrar [1898] 21 Q. B. D. 131.
[4] Alliance F. Corpn., Blaney's case [1866] 3 Bom. H. C. R. O. C. 106.
[5] Bowman v. Secular Society [1917] A. C. 406, 439.
[6] R. v. Registrar [1912] 3 K. B. 23.
[7] Ashbury Ry. Carriage &c. Co. v. Riche [1875] L. R. 7 H. L. 653.

Company becomes a legal entity.

A company, as soon as it is incorporated, becomes a legal entity distinct from its members [1]. It becomes a legal *persona* [2] and not a mere aggregate of the shareholders [3]. The distinction should be clearly marked, observed and maintained between an incorporated company's legal entity and its actions, assets, rights and liabilities on the one hand, and the individual shareholders and their actions, assets, rights and liabilities on the other hand [4]. The corporator, even if he holds all the shares, is not a corporation and neither he, nor any creditor of the company, has any property, legal or equitable, in the assets of the corporation [5]; and it follows that two companies so incorporated are not the same persons in the eye of the law even though the shareholders in both the companies are the same persons [6]. "It not infrequently happens in the course of legal proceedings", observed Lord Buckmaster, "that parties who find they have a limited company as debtor with all its paid up capital issued in the form of fully paid up shares and no free capital for working suggest that the company is nothing but an *alter ego* for the people by whose action it is controlled. But in truth the Companies Acts expressly contemplate that people may substitute the limited liability of a company for the unlimited liability of individuals with the objects that by this means enterprise and adventure may be encouraged. A company therefore which is duly incorporated, cannot be disregarded on the ground that it is a sham although it may be established by evidence that in its operations it does not act on its own behalf as an independent trading unit, but simply for and on behalf of the people by whom it has been called into existence" [7]. In a recent Privy Council case [8] Lord Russell of Killowen who delivered the judgment observed as follows: "In the Court of Appeal Riddell J. A. would, their Lordships think, have allowed the appeal, but for the fact that he thought from the evidence 'that the company was a sham *simulacrus* or cloak and that its business must be regarded as the business of these three' meaning thereby the three partners. He thought that the true position was that the old company, although a separate legal entity, was acting as the agent of the three partners, and was carrying on as such agent not the business of the old company, but the business of the three partners.........But such a view is directly opposed both to the evidence in the case and to the principles and decision in *Salomon v. Salomon* [1927] A. C. 22. In that case Lord Halsbury puts his view in the form of a dilemma thus: 'Either the limited company was a legal entity or it was not. If it was, the business belonged to it and not to Salomon. If it was not, there was no person or no thing to be an agent at all; and it is impossible to say at the same time that there is a company and there is not.'" In this case [8] their Lordships have further held that it could not be held for taxation (income tax) purposes that the business was the property of some other person and that the company was carrying on the business as agent for that other person and referred to *Commissioners of Inland Revenue v. Sansom* [1921]

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1. George Newman & Co. [1895] 1 Ch. 674 C. A.; Salomon v. Salomon & Co. [1897] A. C. 22, 42, 51; Commissioners of Inland Revenue v. Sansom [1921] 2 K. B. 492, 514; Rainham Chemical Works v. Belvedere &c. Co. [1921] 2 A. C. 465, 475, 476, 488; Janson v. Driefontein Consolidated Mines [1902] A. C. 497; Indian Cotton Co. v. Raghunath [1931] B. 178, 33 Bom. L. R. 111, 130 I. C. 598.
2. Per Cave J. in Sheffield &c. Society [1888] 22 Q B. D. 470 at p. 476.
3. Flitcroft's case [1882] 21 Ch. D. 519.
4. E. B. M. Co. v. Dominion Bank (infra).
5. Macaura v. Northern Assurance Co. [1925] A. C. 619 at p. 633.
6. Pattinson v. Bindhya Debi [1933] P. 196, 12 Pat. 216.
7. Rainham Chemical Works v. Belvedere &c. Co. [1921] 2 A. C. 465.
8. E. B. M. Co. v. Dominion Bank [1937] P. C. 279, 170 I. C. 545.

2 K. B. 492. In a public statute the word "person" means primarily a person in law and includes "any company or association or body of individuals incorporated or not" [1].

Suit by or against a company.

An incorporated company must sue and be sued in its corporate name [2]. "It is an elementary principle", observed Lord Davey [3], "of the law relating to joint stock companies that the Court will not interfere with the internal management of companies acting within their powers and in fact has no jurisdiction to do so. Again it is clear law that in order to redress a wrong done to the company or to recover moneys or damages alleged to be due to the company, the action should *prima facie* be brought by the company itself. These cardinal principles are laid down in the well known cases of *Foss* v. *Harbottle* [4] and *Mozeley* v. *Alston* [5] and in numerous later cases which it is unnecessary to cite. But an exception is made to the second rule, where the persons against whom the relief is sought themselves hold and control the majority of the shares in the company, and will not permit an action to be brought in the name of the company. In that case the courts allow the shareholders complaining to bring an acton in their own names.........The cases in which the minority can maintain such an action are therefore confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the company. A familiar example is where the majority are endeavouring directly or indirectly to appropriate to themselves money, property, or advantages which belong to the company, or in which the other shareholders are entitled to participate as was alleged in the case of *Menier* v. *Hooper's Telegraph Works* [6]. It should be added that no mere informality or irregularity which can be remedied by the majority will entitle the minority to sue if the act when done regularly would be within the powers of the company and the intention of the majority of the shareholders is clear. This may be illustrated by the judgment of Mellish, J. in *Mac Dougall* v. *Gardiner* [7]."

Such a company can sue for libel affecting its property or for a libel reflecting on the management of its business or attacking its financial position [8]. In such cases it is not necessary to prove special damage [9]. A trading company may sue in respect of a malicious and unreasonable presentation of a winding up petition against it [10].

A suit for recovery of salary or wages lies against the company and not its secretary or managing director [11]. But a solicitor preparing, on instruction from persons who became directors subsequently, memorandum and articles of association before the formation of the company, cannot sue the company, although it has taken benefit of his work [12]. Even the expenses of registration cannot be recovered [13].

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[1] S. 3, cl. (39), General Clauses Act (X of 1897) ; see also Gramophone & Typewriter v. Stanley [1908] 2 K. B. 89.

[2] India General S. N. & R. Co. v. Lalmohan [1916] 43 Cal. 441.

[3] Burland v. Earle [1902] A. C. 83 P. C. at pp. 93-94.

[4] [1843] 2 Ha. 461.

[5] [1847] 1 Ph. 790.

[6] [1874] 9 Ch. App. 350.

[7] [1875] 1 Ch. D. 13, 25.

[8] Thorley's Cattle Food Co. v. Massam [1883] 14 Ch. D. 763 C. A.

[9] Empire T. S. Machine Co. v. Linotype Co. [1898] 79 L. T. 8, C. A.

[10] Quartz Hill G. M. Co. v. Eyre [1883] 11 Q. B. D. 674, C. A.

[11] M. Abdul Haq v. Das Mal [1913] 19 I. C. 595.

[12] English & Colonial Produce Co. [1906] 2 Ch. 435 ; see the judgment of Vaughan Williams L. J, at p. 441. The company is not liable even in equity—per Buckley L. J. But in this case the solicitor was allowed to recover the registration fees paid by him on the ground that the company was under a statutory obligation to pay the registration fees. See also Scott v. Lord Ebury [1867] L. R. 2. C. P. 255.

[13] National M. M. Coach Co., Clinton's claim [1908] 2 Ch. 515.

In England a company cannot be sued by the vendor on contract made before its incorporation [1]. The person who made the contract on behalf of the company remains personally liable, even if it is afterwards ratified by the company [2]; for a company cannot by adoption or ratification obtain benefit of an agreement purporting to be made on its behalf before its incorporation [1]. In order to do so, a new contract must be made with it after its incorporation on the terms of the old one [1]. The new contract may however be inferred from the facts of the case [1].

Signing and verification of pleadings.

The pleading should be signed and verified on behalf of the company by the secretary ot by any director or other principal officer who is able to depose to the facts of the case [3]. The Court may at any stage of the suit require the personal appearance of such an officer who may be able to answer material questions relating to the suit [4]. In the case noted below [5] Buckland J. has held that in the case of a company or corporation it must be established by an affidavit, (1) that the person signing the pleading was authorised to do so, and (2) that the person verifying it was fit to do so. But when a specific rule has been laid down in O. 29, R. 1, C.P.C. regarding the signing and verification of pleadings in the case of corporations, the specific rule, it is submitted with great respect, excludes, so far as it goes, the general rule provided in Rules 14 and 15 of O. 6, C. P. C. Under Rule 3 of O. 29, C. P. C. the Court may at any stage of the suit require the personal appearance of the secretary, director or other principal officer of the corporation who may be able to answer material questions relating to the suit, thus providing a sufficient safeguard. Of course a company can always authorize some other person under the last part of O. 6, R. 14 to sign the pleading. If the company does not choose that course it can act under O. 29, R. 1, i. e., it can rely on that Order as in fact constituting the persons named therein as agents to sign without the necessity of an express authority [6]. In a proceeding for or against a company it cannot be represented by the registrar of companies [7].

See notes to s. 2 (2) *ante*.

Contract before incorporation.

In India too it has been held that a company cannot be bound by a contract entered into on its behalf before the company was formed, and that it is not competent to bring a company into existence bound to enter into a contract with a third party, the terms of which have been arranged before the company is formed. It is for the company to consider after its formation whether it will enter into the contract or not [8]. But s. 23 of the Specific Relief Act expressly provides that where the contract is made "for the purpose of the company and such contract is warranted by the terms of the incorporation", specific performance thereof may be obtained by the company, though the contract is made before its incorpo-

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1. Natal Land &c. Co. v. Pauline &c. Syndicate [1904] A. C. 120. See also the judgment of Erle C. J. in Kelner v. Baxter (infra) at p. 183.
2. Kelner v. Baxter [1866] L. R. 2 C. P. 174.
3. C. P. Code, Or. XXIX, r. 1.
4. C. P. Code, Or. XXIX, r. 3.
5. International &c. Compagnie v. Mehta & Co. [1927] C. 780, 31 C. W. N. 1030, 105 I. C. 768.
6. Calico Printers' Assn. v. Karim [1930] B. 566, 32 Bom. L. R. 1305, 128 I. C. 557; Osborne, Garrett & Co. v. Abdulla [1931] S. 178, 134 I.C. 1170.
7. Kawdu v. Berar Ginning Co. [1929] N. 185, 116 I.C. 427.
8. Ram Kumar v. Sholapur Spinning & Weaving Co. [1934] B. 427, 36 Bom L.R. 907.

ration. S. 27 of the same Act provides that when the promoters of a public company have before its incorporation entered into a contract, specific performance thereof may be enforced against the company "provided that the company has ratified and adopted the contract and the contract is warranted by the terms of its incorporation." These two sections however have been held to be inapplicable to contracts to take shares [1].

The Court will not make an order the effect of which is to enforce specifically any contract of personal service [2].

Date of registration.

The date of registration of a company is the date mentioned in the certificate and not that on which the signature of the registrar was written [3]. The effect of this section is that the date mentioned in the certificate is the first day of the company's corporate existence, and it is not open to any one to prove the moment of time on which a corporate act was done that day and then to say that the company was not in existence at that moment. The corporate person is to be treated as having been in existence for the whole of the day on which it was incorporated [3].

Effect of registration.

As soon as a company is registered, it becomes a distinct legal 'person' even if the members thereof consist of seven persons, only one of whom holds all the shares and the rest are mere *cestui que trust*. "If they are shareholders, they are shareholders for all purposes, and even if the statute was silent as to the recognition of trusts, I should be prepared to hold that if six of them were the *cestui que trust* of the seventh, whatever might be their rights *inter se*, the statute would have made them shareholders to all intents and purposes with their respective rights and liabilities and dealing with them in their relation to the company; the only relation which I believe the law would sanction would be that they were corporators of the corporate body" [4]. "Whether they are beneficiaries or bare trustees is a matter with which neither the company nor creditors have anything to do: it concerns only them and the *cestui que trust* if they have any" [5]. "It may be that a company constituted like that under consideration was not in the contemplation of the legislature at the time when the Act authorizing limited liability was passed, that if what is possible under the enactments as they stand had been foreseen, a minimum sum would have been fixed as the least denomination of share permissible and that it would have been made a condition that each of the seven persons should have a substantial interest in the company. But we have to interpret the law not to make it and it must be remembered that no one need trust a limited company unless he so please and that before he does so he can ascertain, if he so please, what is the capital of the company and how it is held" [5]. See notes to s. 2(2).

Co-operative society.

In the case of a co-operative society registered under the Co-operative Societies Act, 1912 as well as under the Companies Act, it has been held by a Full Bench of the Patna High Court that the effect of incorporating such a company under the Companies Act is to make the society a legal person and if a man trust such a corporation he trusts that legal person and must look to its assets for payments and he can only call upon individual members to contribute in case the Act or charter so provides [6].

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[1] Imperial Ice Manufacturing Co. v. Munchershaw [1889] 13 Bom. 415.

[2] Ram Kumar v. Sholapur Spinning & Weaving Co. [1934] B. 427, 36 Bom. L. R. 907.

[3] Jubilee Cotton Mills [1923] 1 Ch. 1 on appeal [1924] A. C. 958.

[4] Salomon v. Salomon & Co. [1897] A. C 22 at p. 30, per Lord Halsbury.

[5] Ibid at p. 46, per Lord Herschell.

[6] Harihar v. Bansi [1931] P. 321 F. B., 12 P. L. T. 619, 134 I. C. 421.

A private company can commence business as soon as it is incorporated. As to the right of a public company in this respect see s. 103.

If the original certificate of incorporation is lost or if a copy is required for any other reason, another certificate may be obtained from the registrar 1.

As to the seal, see notes to regulation 76, Table A.

Conclusiveness of certificate of incorporation.

24. (1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A declaration by an advocate, attorney or pleader entitled to appear before a High Court who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company, of compliance with all or any of the said requirements shall be filed with the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Certificate conclusive.

The certificate of incorporation is conclusive on the following points, *viz.*, (1) that all the requirements of the Act in respect of registration and of matters precedent and incidental thereto have been complied with 2; (2) that the association is a company authorised to be registered under the Act; (3) that it has been duly registered. Even though a company is formed for the mere purpose of being registered, the question cannot be raised whether it was authorised to be registered under the Act 3. The only function of the Court therefore is to construe the memorandum of association as it stands 4.

It was held in 1891 that the certificate of incorporation could not be treated as conclusive of the fact that seven persons signed the memorandum of association and that if a less number signed it, the Court had no jurisdiction to make a winding up order 5. But in a later case from India the Privy Council held that the certificate is conclusive for all purposes, even though the conditions of registration prescribed by the Act were not duly complied with and there were not seven subscribers to the memorandum of association 6. The certificate is conclusive, but it will not make illegal objects legal 7.

Although the conduct of the registrar in knowingly registering the memorandum which had been altered is most censurable, the certificate is conclusive evidence that the company was duly constituted and the requirements of the Act complied with 8.

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1. S. 248, sub-s. (5).
2. Jubilee Cotton Mills (supra); Peel's case (infra); Nassau Phosphate Co. [1876] 2 Ch. D. 610; Oakes v. Turquand (infra).
3. Hammond v. Prentice Brothers [1920] 1 Ch. 201.
4. Cotman v. Brougham [1918] A. C. 514. See also Peel's case [1867] L. R. 2 Ch. App. 674 and Oakes v. Turquand [1867] L. R. 2 H. L. 325.
5. National Debenture Assets Corporation [1891] 2 Ch. 505.
6. Moosa Goolam Ariff v. Ebrahim Goolam Ariff [1912] 16 C. W. N. 937 P. C., 40 Cal. 1 P. C.
7. Bowman v. Secular Society [1917] A. C. 406 at p. 439.
8. Peel's case (supra).

25. (1) Every company shall send to every member, *at his request and within fourteen days thereof* on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

Copies of memorandum and articles to be given to members.

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding ten rupees.

The words in italics have been substituted by the Companies (Amendment) Act, 1936 for the words "at his request and." Thus a time limit of 14 days has been fixed for compliance with the member's requisition so that the company may not procrastinate.

25A. (1) *Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration.*

Alteration of memorandum or articles to be noted in every copy.

(2) *If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum or articles which are not in accordance with the alteration, it shall be liable to a fine not exceeding ten rupees for each copy so issued and every officer of the company who is knowingly and wilfully in default shall be liable to the like penalty.*

This section has been inserted by the Companies (Amendment) Act, 1936. It reproduces s. 24 of the English Act of 1929 with the additions (by the Select Committee) of the words "or articles" in sub-s. (1) and "knowingly and wilfully" in sub-s. (2).

Wilful default.

"An act or omission to do an act is wilful where the person, of whom we are speaking, knows what he is doing and intends to do what he is doing. But if that act or omission amounts to a breach of his duty and therefore to negligence, is the person guilty of wilful negligence? In my opinion that question must be answered in the negative, unless he knows that he is committing and intends to commit a breach of his duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of duty" 1.

Associations not for Profit.

26. (1) Where it is proved to the satisfaction of the [*Central Government*] that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, "religion," charity, or any other useful object, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the [*Central Government*] may, by license under the hand of one of its

Power to dispense with "Limited" in name of charitable and other companies.

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1. City Equitable Fire Insurance Co. [1925] 1 Ch. 407 per Romer J. This view was affirmed by the Court of Appeal consisting of Pollock M. R., Warrington & Sargant, L. JJ.

Secretaries, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A license by the [*Central Government*] under this section may be granted on such conditions and subject to such regulations as the [*Central Government*] thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the [*Central Government*] so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, *and of sending lists of members to the registrar.*

(4) A license under this section may at any time be revoked by the [*Central Government,*] and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section :

Provided that, before a license is so revoked, the [*Central Government*] shall give to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

Alterations. In sub-s. (1) the word "religion" was inserted by Act XXXIII of 1926. In sub-s. (3) the words in italics have been substituted by Act XXII of 1936 for the words "and of filing list of members and directors and managers with the registrar", for bringing the sub-section into line with sub-s. (3) of s. 18 of the English Companies Act of 1929. Throughout this section the words "Central Government" have been substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937. But in exercise of the powers conferred by sub-s. (1) of s. 124 of the Government of India Act, 1935, the Central Government has, with effect from 1st April, 1938 entrusted to Provincial Governments its functions under this section (*vide* Gazette of India dated 26th March, 1938, Part I, p. 440).

Licences. In England licence for formation of such companies are granted by the Board of Trade. The provision and the form usually adopted by the Board of Trade prohibiting payments to members do not prohibit any payment made for value received, or for service rendered by a member, or the granting of a pension to a retiring officer who is a member [1].

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[1] Cyclists' Touring Club v. Hopkinson [1910] 1 Ch. 179.

"Science." The word "science" is not confined to pure speculative science alone but includes various branches of science, such as mechanical or engineering science [1].

"Charity." The word "charity" is liberally construed and is not confined to such charity as consists of giving relief to the poor [2].

Alteration of memo. In case an association formed under this section desires to alter its memorandum of association, it should submit the proposed alterations to the Government first and if the Government approve them, then apply to the Court under s. 12 [3]. Where however the High Court has by order granted an application for confirmation of alteration without its being first approved by the Government, the High Court has jurisdiction to cancel its wrong order [4].

Income tax. It has been recentlv held by the Allahabad High Court that a chamber of commerce incorporated under this section as an association limited by guarantee, not existing for earning profits and prohibited under the law from declaring any dividends to its members, is not exempted from being assessed to income tax, and that the chamber could not claim exemption *quod* any money it might have elected to spend on charity [5].

Companies limited by Guarantee.

Provision as to companies limited by guarantee.

27. (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

As to the contents of the memorandum and articles of association of such company see ss. 7 and 17 and forms B and C in the Third Schedule.

Nothing in this section affects companies registered before 1st April, 1914.

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1. Commissioners of Inland Revenue v. Forest [1890] 15 App. Cas. 334.
2. Commissioners of Income Tax v. Pemsel [1891] A. C. 531.
3. St. Hilda's Incorporated College [1901] 1 Ch. 556 ; Ugar Sen v. Chamber of Commerce, Hapur [1937] All. 202, [1937] A. 432, [1936] A.L.J. 1129.
4. Ugar Sen v. Chamber of Commerce, Hapur (supra).
5. Chamber of Commerce, Hapur v. Commissioner of Income Tax [1936] A. 764, [1936] A. L. J. 1085. But see New York Life Insurance Co. v. Styles [1890] 14 App. Cas. 381 ; United Service Club v. Crown [1921] 2 Lah. 208, 61 I. C. 886 ; Commissioner of Income Tax v. Millowners M. I. Assn. [1932] B. 104, 56 Bom. 119, 135 I. C. 813, 33 Bom. L. R. 1581 ; Secretary, Board of Revenue v. Mylapore H. P. Fund [1923] 47 Mad. 1, 76 I. C. 833.

PART III.

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

Nature of shares.

28. (1) The shares or other interest of any member in a company shall be moveable property, transferable in manner provided by the articles of the company.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

Meaning of "share."

"Share" means share in the share capital of the company and includes stock except when a distinction between stock and shares is expressed or implied[1]. A share is not a sum of money but is an interest measured by a sum of money and made up of various rights contained in the contract[2]. Shares are "goods" within the meaning of s. 76 of the Indian Contract Act[3]. See notes to s. 2, cl. (16).

Meaning of "transfer."

"Transfer" means transfer by the acts of a member, while "transmission" means transmission by devolution of law, *e. g.*, by death or bankruptcy[4]. The articles of association of most companies contain some restriction on the right of transfer[5]. There seems to be no limit to the restriction that may be so imposed[6]. Any condition precedent to transfer, such as obtaining consent of the directors[7], or giving the members an opportunity to purchase[8] even at a price much below their real value[9], is valid. The restrictive provisions are, however, strictly construed[10]. "Shares", says Lord Wrenbury, "are *prima facie* transferable. But there is no law which precludes the shareholders from contracting for value that they shall each submit to any reasonable restriction which they choose to agree to...A restriction which precludes a shareholder altogether from transferring may be invalid, but a restriction which does no more than give a right of pre-emption is valid"[11].

Right of transfer.

A shareholder, whether in a public or a private company, has a property in his shares which he has a right to dispose of subject only to any express restriction in the articles[12]. In such a case the transfer cannot take effect without the sanction of the company[13]. In the absence of such restrictions, the shareholder has, by virtue of this section, the right to transfer his shares to any person, even to a pauper 1, or even if the transfer is made to escape liability of the member 2, provided that the transfer is real and *bona fide* 1, without retaining by the transferor any interest in the shares 3. Directors are entitled to a reasonable time for considering the transfer, before declining registration 4. See s. 34, sub-ss. (1) and (4).

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[1] S. 2, Cl. (16).
[2] Per Farewell J. in Borland's Trustee v. Steel Bros. & Co. [1901] 1 Ch. 279, 288.
[3] Maneckji v. Wadilal Sarabhai & Co. [1926] 53 I. A. 92, 50 Bom. 360, 30 C. W. N. 890, 143 C. L. J. 508 ; Evans v. Davies [1893] 2 Ch. 216 ; see also Hazari Muil v. Satish [1918] 46 Cal. 331 ; Fazal v. Mangaldas. [1921] 46 Bom. 489.
[4] Bentham Mills Spinning Co. [1879] 11 Ch. D. 900 C. A ; Barton v. London & N. W. Rail Co. [1889] 24 Q. B. D. 77 C. A.
[5] Vide Table A, regulation 20.
[6] Cawley & Co. [1889] 42 Ch. D. 209, 231.
[7] Dublin N. C. Milling Co. [1909] I. R. 179.
[8] Ontario Jockey Club v. Mc Bridge [1927] A. C. 916 P. C., [1928] P. C. 291 ; A.—G. v. Jameson [1904] 2 I. R 644.
[9] Phillips v. Manufacturers' Securities [1917] 116 L. T. 290, 31 T.L.R. 451.
[10] Exp. Harrison [1885] 28 Ch. D. 363 C. A.
[11] Ontario Jockey Club v. Mc Bridge (supra) at p. 293.
[12] Copal Varnish Co. [1917] 2 Ch. 349 ; Bede Steam Shipping Co. [1917] 1 Ch. 123 ; Swan Mal v. Shiv Charan [1923] 71 I. C. 814.
[13] Devi Ditta v. Standard Bank [1927] L. 797, 101 I. C. 568.

A member may transfer his shares to a person who is incapable of paying the unpaid call, even if the transfer is made for the express purpose of relieving the former from liability 1. But this right may be restricted by the articles 5. The directors may refuse to register a *bona fide* transfer to an infant, because the latter cannot accept it 6.

Where the articles give an unfettered discretion to the directors to refuse any transfer if it appear to be against the interest of the company, the burden of proving that the refusal was not *bona fide* is upon the person who sues the company for non-registration of the transfer 7.

Directors' power to refuse registration.

If the directors *bona fide* exercise their discretion to refuse the registration of a transfer within the powers conferred on them, the Court will not override their decision or compel them to state their reasons 8. But where there is evidence to show that the directors have exercised the powers capriciously or unfairly, the Court has jutisdiction to interfere under s. 38 8. The rule that the directors are not bound to disclose their reasons, if they have considered the question and have acted *bona fide*, applies to cases where their power is limited to particular grounds as well as where their power is absolute 9. But if they choose to give their reasons, the Court will then consider whether they are legitimate 10 and whether the reasons given by the directors proceeded on a right principle 11. Objections not personal to the transferee do not constitute valid reasons 11. The directors however have no discretionary powers independently of the powers conferred on them by the articles to refuse registration of a transfer which has been *bona fide* made 12. Where registration of a transfer is wrongfully refused, the measure of damages is the value of the shares at the time of the refusal 4. "The shares are", observed Sir W. Page-Wood J., "transferable by virtue of the statute, and that the province of the articles is to point the mode in which they shall be transferred, and the limitations (if any) to which a shareholder shall be subjected before he can transfer" 13.

Where the articles provide that the sanction of the board of directors will be required for effecting a transfer, but they would not be bound to assign any reason for

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1. Lindlar's case [1910] 1 Ch. 207 & 312. In this case the whole subject of the validity of transfers for escaping liability has been discussed.
2. De Pass' case [1859] 4 De G. & J. 544.
3. Hyam's case [1859] 1 De G. F. & J. 75.
4. Ottos Kopje Diamond Mines [1893] 1 Ch. 618.
5. A. G. v. Jameson (supra).
6. R. v. Midland &c. Rail Co. [1862] 15 I. C. L. R. 514.
7. Sri Tripura Sundari Cotton Press Co. v. Addepalli [1935] M. 784, 69 M. L. J. 239, 158 I. C. 601.
8. Ex p. Penny [1873] 8 Ch. App. 446.
9. Coalport China Co. [1895] 2 Ch. 404 ; Muir Mills Co. v. Condon [1900] 22 All. 410. In this case a large number of English decisions have been considered.
10. Bell Brothers [1891] 65 L. T. 245.
11. Muir Mills Co. v. Condon (supra). See also Coalport China Co. [1895] 2 Ch. 404 ; Kaikhasro v. Coorla Spinning & Weaving Co. [1891] 16 Bom. 80 ; Moffat v. Farquhar [1877] 7 Ch. D. 591 ; Poole v. Middleton [1861] 29 Beav. 646, 650.
12. Weston's case [1868] 4 Ch. App. 20.
13. Weston's case (supra) at p. 26.

withholding the sanction, the transferee's title will not be complete without the sanction [1]. A letter of renunciation by an existing shareholder in favour of his nominee of his right to an allotment of new shares is not however such a transfer [2].

Where the articles provide that transfers are subject to the approval of the directors, they cannot exercise the power, which is a fiduciary one, for the benefit of the company, until the question of each transfer together with the names of the transferors and the transferees is before them and they have an opportunity of considering each case [3] fairly [4]. The Court will interfere where the directors do not exercise their discretion *bona fide* or they act oppressively, capriciously or corruptly or in some way *mala fide* [5].

Liability of transferee.

A person who executes a transfer form remains liable unless and until there is on the register a transferee who is legally liable to the company. The company, or the liquidator where the company has gone into liquidation, is not concerned with the persons paying the consideration for the shares [6]. Once a person's name is put on the register of members in respect of certain shares, they remain the shares of the person who took them and the position cannot be altered except by some valid transfer [7].

Implied contract to indemnify.

Upon a sale of shares there is an implied contract on the part of the buyer to indemnify the seller from any future call or other liabilities except the statutory ones [8]. But the seller does not warrant that the company will accept the transferee [12]; for it is the duty of the transferee to get himself registered [9]. It does not however follow that a sale can take place even without registration [10]. If after the transfer the directors acting within their powers refuse to register the transfer, the transferor remains the legal holder of the shares, but becomes a trustee for the transferee and must collect and pay over to the transferee the dividends as they accrue [11]. If the purchaser desires to protect himself, he should buy with "registration guaranteed"; otherwise the vendor can keep the purchase money, even if the transfer is not registered [12]. Where the shares were not registered in the name of the transferor, there is however a failure of consideration [13].

Under a contract for the sale of shares, the measure of damages upon a breach by the buyer is the difference between the contract price and the market price *at the date of the breach* [14]. "It is undoubted law", observed their Lordships of the Judicial Committee, "that a plaintiff who sues for damages owes the duty of taking all reasonable steps to mitigate the loss consequent upon the breach, and cannot claim as damages any sum which is due to his own neglect. But the loss to be ascertained is the loss *at the date of the breach.* If at that date the plaintiff could do something or did something which mitigated the damage, the defendant is entitled to the benefit of it" 1.

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[1] Ex. p. Gilbert [1891] 16 Bom. 398.
[2] Pool Shipping Co. [1920] 1 Ch. 251.
[3] Ex. p. Ramdas [1899] 23 Bom. 685.
[4] Kaikhosro v. Coorla Spinning & Weaving Co. [1891] 16 Bom. 80.
[5] Bell Brothers (supra).
[6] Peninsular Life Assurance Co. [1936] B. 24, 37 Bom. L. R. 904, 160 I. C. 638.
[7] Per Lord Romily, M. R. in Merchant's Co. [1869] 9 Eq. 5, 7; see also Nicol's case [1885] 29 Ch. D. 421, 434; Buckley, 10th ed. p. 591.
[8] Hardoon v. Belilios [1901] A. C. 118 P. C.; Spencer v. Ashworth, Partingdon & Co. [1925] 1 K. B. 589 C. A.
[9] Skinner v. City of London &c. Corpn. [1885] 14 Q. B. D. 882; London Founders' Assn. v. Clarke [1888] 20 Q. B. D. 576; Muir Mills & Co. v. Condon [1900] 22 All. 410; Bahadur v. Shiam [1914] 36 All. 365.
[10] Domingo v. D' Souza [1928] 26 A. L. J. 627.
[11] Stevenson v. Wilson [1907] S. C. 445 (Ct. of Sess].
[12] London Founders' Assn. v. Clarke (supra).
[13] Platt v. Rowe [1909] 26 T. L. R. 49.
[14] Jamal v. Moolla Dawood, Sons & Co. [1915] 43 I. A. 6 at p. 10, 43 Cal. 493, 502.

Transfer—how effected.

The deed of transfer should be signed both by the transferor and the transferee ; for if the transferee does not sign it or otherwise agrees to become a shareholder, the transfer will not be effectual to fasten any liability on the transferee, even if the transfer is registered by the directors 2. In such a case the transfer executed by the transferor alone does not pass legal title 3. But if the transfer has been acted upon or recognized by the transferee, it will be effectual 3. The object of requiring the transferee to execute the transfer is to satisfy the company that he agreed to take the shares 4. A registered transfer is however presumed *prima facie* to have been accepted by the transferee, even where he has not executed the instrument of transfer 5.

A seller of shares is bound, if the contract fixes no date, to deliver the certificate within a reasonable time 6. A contract for the sale of shares may be made orally 7, and specific performance of such a contract 8 may be obtained, even though the company, pending the litigation, has gone into liquidation 9.

On the purchase of shares the obligation to prepare the instrument of transfer is, as a general rule, on the purchaser 10. The instrument must be in accordance with the articles and be executed in manner prescribed therein ; as for instance, if the articles require (as in reg. 18 of Table A) that the instrument shall be executed both by the transferor and the transferee, the omission of execution by the latter invalidates the transfer 11. But the omission of particulars known to the directors will not invalidate a transfer 12.

Where the transfer is lodged with the company and it goes into liquidation before the transfer is registered, the transfer will be registered *nunc pro tunc, i. e.*, as if it had been registered when the registration ought to have been made 13.

Effect of transfer.

Upon a transfer all the rights and obligations of the member in respect of the shares are transferred from the date of the transfer, but his rights to dividends &c. already declared are not transferred unless expressly so provided, nor are the liabilities in respecr of calls already made ; but the rights to future dividends and liabilities in respect of future calls are transferred 14. If the transfer is preceded by a contract, the purchaser will be entitled to dividends declared after the contract 15. Ordinarily, and in the absence of a contract to the contrary, a purchaser of shares is entitled to all the dividends which may have been

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1. Jamal v. Moolla Dawood, Sons & Co. [1915] 43 I. A. 6 at p. 10, 43 Cal. 493, 502.
2. Powell v. London & P. Bank [1893] 2 Ch. 555.
3. Ortigossa v. Brown, Janson & Co. [1878] 38 L. T. 145.
4. Taurine & Co. [1883] 25 Ch. D. 118, per Cotton L. J. at p. 133. See also s. 30 and notes.
5. Standing v. Bowring [1886] 31 Ch. D. 282.
6. D. Waal v. Adler [1887] 12 App. Cas. 141.
7. Watson v. Spratley [1854] 10 Ex. 222, 24 L. J. Ex. 53.
8. Poole v. Middleton [1861] 29 Beav. 646.
9. Paine v. Hutchinson [1868] 3 Ch. App. 388.
10. Birkett v. Cowper-Coles [1919] 35 T. L. R. 298.
11. Nagabhusanam v. Ramchandra [1922] 45 Mad. 537.
12. Barned's Banking Co. [1867] 3 Ch. App. 105 ; Letheby v. Christopher [1904] 1 Ch. 815.
13. Sussex Brick Co. [1904] 1 Ch. 598.
14. Per Lindley, L. J. in Taylor, Phillips & Rickard's case [1897] 1 Ch. 298 & 305.
15. Black v. Homersham [1878] 4 Ex. D. 24, 39 L. T. 671.

declared after the date of the purchase. The general rule however may be modified by special stipulations 1. "There is nothing in law", observed Sen, J. in the last cited case, "to preclude a shareholder from selling the shares only and reserving the dividends to himself. Where shares are sold, no matter whether by private treaty or by public sale, and it is definitely understood that the shares and not the dividends on the shares are the subject of bargain, the purchaser cannot deprive the original owner of his right to the dividend of a period anterior to the sale, even though the dividend may have been declared subsequent to the date of the purchase" 2. But in a recent English case Morton J. has held that in a sale by private bargain (not governed by the Stock Exchange Rules as to sale *cum* dividend or *ex* dividend) of shares, between days on which dividends are declared, the purchaser buys the shares with all the rights which they confer in respect of the company's capital and in respect of profits up to the date of sale. Thus a dividend payable on the declaration next following such a sale is not apportionable, and goes entirely to the purchaser 3. In transactions on the stock exchange made near the time of the declaration of dividend, the sale is generally expressed in the contract as *ex div.* or *cum div.* usually written x. *d.* and c. *d.* A slight delay in according sanction to a transfer will not justify a payment of dividends to a person not yet entered on the register as a member, and such a delay will not make the company liable to an action for damages 4. Until the transferee's name is entered in the register of members, the dividends on the shares are payable to the transferor, for he is deemed to be the holder of the shares until the entry is made 5.

Effect of non-compliance with rules.

Non-compliance with the rules of a company for the complete transfer of shares prevents the shares from legally vesting in the transferee, though belonging to him in equity 6. Such a transfer does not absolve the transferor from his liability as a contributory 6. If the articles require a transfer to be made by a deed under seal, a blank transfer cannot be filled in without a power a attorney 7, nor are the directors at liberty to dispense with the formality 8. But if the formalities have been substantially complied with and the transferee accepted as a shareholder, then after a lapse of time the transfer cannot be impeached 9.

Registration of transfer.

A shareholder cannot insist on registration of a transfer on the eve of liquidation, nor if the rights of creditors have intervened, although a winding up has not commenced 10. Where a company has become insolvent, the directors should refuse registration of transfers although the company has not actually gone into liquidation 11. A company was not bound to send notice to the transferor of its refusal to register the transfer 12. But now see sub-s. (4) of s. 34.

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1. Co-operative Co. v. Bhagwan Das [1930] A. 615, [1930] A.L.J. 1396, 128 I.C. 229.
2. Co-operative Co. v. Bhawgan Das [1930] A. 615, [1930] A.L.J. 1396.
3. Richards v. Wimbush [1940] Ch. 92.
4. Sonawala v. Lahore Electric Supply Co. [1936] L. 207, 159 I.C. 766.
5. Peninsular Life Assurance Co. [1936] B. 24, 37 Bom. L. R. 904, 160 I.C. 638.
6. Hakim Rai v. Peshawar Bank [1915] 31 I.C. 865 ; Nanney v. Morgan [1885] 37 Ch. D. 346.
7. Powell v. London & P. Bank [1893] 2 Ch. 555 ; *ex. p.* Sargent [1874] 17 Eq, 273 ; Taylor v. G.I.P. Ry. Co. [1859] 4 De G. & J. 559 ; France v. Clarke [1885] 26 Ch. D. 257 ; Fox v. Martin [1895] 64 L. J. Ch. 473.
8. Murray v. Bush [1873] L.R. 6 H.L. 37, 50 ; McEuen v. West London &c, Co. [1871] 6 Ch. App. 655 ; Musgrave & Hart's case [1867] 5 Eq. 193 ; Marino's case [1867] 2 Ch. App. 596 ; London Founder's Assn. v. Clarke [1888] 20 Q.B.D. 576 ; *ex. p.* Hennessey [1850] 2 Mac. & G. 201.
9. Buckley, 10th ed. p. 38.
10. Dodds v. Cosmopolitan Insurance Corpn. [1915] S. C. 992.
11. Hakim Rai v. Peshawar Bank (supra).
12. Gustard's case [1869] L. R. 8 Eq. 438.

A company is not however justified in refusing to register a transfer on the assumption that it is a breach of trust 1. The proper course for the company is to give notice that unless proceedings are taken within specified time, it will proceed to register the transfer 2. A company cannot refuse to register a transfer to a bankrupt director on the ground that the shares will pass to the turstee in bankruptcy 3.

Although the articles prescribe certain conditions which have to be complied with to entitle a transferee to get his name on the register, those are matters which the company may or may not insist upon 4. Where shares are transferred to a firm in the firm name, the company is not bound to register the transfer, as the firm is not a person 5.

Effect of registration on company's lien.

If the articles give the company a lien on the shares, and the directors allow registration of transfer before the debt is paid, the company loses the security 6. But the directors cannot, by delaying registration, acquire a lien which would defeat the transfer 7. A purchaser of shares subject to a lien is bound by it; but he may require the company to resort first to any shares remaining in the hands of the transferor 8. A purchaser at Court sale is entitled, as of right, to have his name entered on the register of members, but he is subject to the same rules as a private purchaser 9.

Security on shares.

A security may be given on shares by a legal mortgage in which case a transfer to the mortgagee is executed and registered, or by an equitable mortgage by deposit of the share certificate with or without a transfer in full or in blank executed by the mortgagor. But the equitable mortgagee's position is not always safe as the mortgagor may obtain a fresh certificate and frustrate the claim of the mortgagee 10. The position of an equitable mortgagee of shares is not however prejudiced by the mortgagor's bankruptcy, although the shares remain registered in his name and notice of the mortgage has not been given to the company 11. On the other hand, even an out and out transfer is unavailing if the registration was obtained by misrepresentation 12. When a shareholder executes blank transfers to enable another to deal with the shares, he is bound not to do anything to prevent registration of the transfer, and if he does improperly intervene he will be liable in damages 13.

"A mortgagee of shares", observed Lord Hailsham, L. C. in a recent case, "cannot split up the interest of the mortgagor and sell the mortgagor's beneficial interest while retaining for himself the legal title, any more than a mortgagee of a house can sell the fixtures in the house leaving the mortgagor the equitable owner of what is left" 14.

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1. Grundy v. Briggs (infra).
2. Grundy v. Briggs [1910] 1 Ch. 444.
3. Sutton v. English & Colonial Produce Co. [1902] 2 Ch. 502.
4. Union Indian Sugar Mills Co. v. Jai Deo [1921] 44 All. 151 at p. 153.
5. Vagliano Anthracite Collieries [1910] W. N. 187, 103 L. T. 211; see also observations of Farwell L. J. in Sadler v. Whiteman [1910] 1 K. B. 868 at p. 889; but see Weikersheim's case [1873] 8 Ch. App. 831.
6. Bank of Africa v. Salisbury Gold Co. [1892] A. C. 281.
7. M'Arthur, Ltd. v. Gulf Line, Ltd. [1909] S.C. 732 (Ct. of Sess).
8. Buckley, 10th ed. p. 42.
9. Gray v. Stone [1893] W. N. 133, 69 L. T. 282.
10. Bradford Banking Co. v. Briggs, Sons & Co. [1886] 12 App. Cas. 29.
11. Colonial Bank v. Whinney [1886] 11 App. Cas. 426.
12. Lindlar's case [1910] 1 Ch. 207, 312 C.A.
13. Hooper v. Herts [1906] 1 Ch. 549.
14. Hunter v. Hunter [1936] A.C. 222 at pp. 248-49.

Forged transfer.

A forged transfer does not give the alleged transferee a title to the shares and does not estop the company by registration 1. If a company acts upon a forged transfer, it may be compelled to restore the shares to the true owner paying him also any dividends that may have been declared in the meantime 2. Even the sending of a notice to the alleged transferor to the effect that a transfer in his name has been lodged, does not protect the company in the case of a forged transfer 3. The company will however be entitled to damages from the person who procured registration by the forged transfer 4.

As observed by Kanga, J. "except where a shareholder is estopped from denying the title of some particular transferee, the general rule of English law is that a purchaser of shares acquires no better title than his vendor himself has (*Colonial Bank* v. *Cady* 5) and that shares in this respect are like other goods and chattels" 6.

Implied contract to indemnify for forgery.

A contract will however be implied on the part of the person lodging a transfer that he will indemnify the company if the document prove to be a forgery, and the broker, who deposits the forged transfer in good faith, is equally liable to the company for any loss it may suffer thereby 7. If the forgery is discovered before the transferee has acquired rights by estoppel, the company may recover the certificate and remove the transferee's name from the register. If the broker represents that he has authority to act for the supposed transferor, he is liable upon an implied contract that he has authority 8. A person who identifies a transferor is liable, if it turns out that a fraud has been committed 9.

Production of share certificate.

Whether a transfer should or should not be registered without production of the share certificate, is a matter within the discretion of the directors 10. In passing transfers the directors should not act upon undertakings or promises given to the intending purchasers, but should exercise an unfettered discretion 11. If a director refuses to attend a board meeting to pass transfers and so makes it impossible to form a quorum, the Court, on being satisfied that the transfer would be passed if a directors' meeting was held, will order rectification of the register of members by inserting the name of the transferee in the place of that of the transferor 12.

Which objections are valid.

The mere fact that transfers of shares are made to increase the voting power of the transferor or in his interest, is no ground of objection to the transfer, for the directors have no power to refuse a transfer of shares, as it is a right of property, except upon personal objection to the transferee 13. It is no valid objection that the transfer is made to avoid a prospective call 14. A colour-

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1. Simm v. Anglo-American Telegraph Co. [1879] 5 Q.B.D. 188 ; Davis v. Bank of England [1824] 2 Bing. 393.
2. Barton v. North Staffordshire Ry. Co. [1888] 38 Ch. D. 458 ; Barton v. London & N.W. Ry. Co. [1890] 24 Q. B. D. 77.
3. Barton v. London & N. W. Ry. Co. (supra).
4. Sheffield Corpn. v. Barclay [1905] A. C. 392 ; see also Starkey v. Bank of England [1903] A. C. 114.
5. [1890] 15 App. Cas. 267.
6. Fazal v. Mangaldas [1921] 46 Bom. 489, 502.
7. Sheffield Corpn. v. Barclay (supra).
8. Starkey v. Bank of England [1903] A. C. 114.
9. Bank of England v. Cutler [1907] 1 K. B. 889.
10. Shropshire &c. Co. v. Queen [1877] 7 H.L. 496.
11. Clark v. Workman [1920] I. R. 107.
12. Copal Varnish Co. [1917] 2 Ch. 349 ; the successive operations by which a transfer is validly made has been pointed out in this case, *vide* p. 354.
13. Moffat v. Farquhar [1877] 7 Ch. D. 591.
14. Cawley & Co. [1889] 42 Ch. D. 209 C. A.

able transfer however will not discharge the transferor from liability 1. But the transfer of a controlling interest in a company is not a mere matter of internal management, as it may involve a complete transformation of the company and consequently may, in a proper case, be restrained 2.

Certification and estoppel.

By certification the secretary does not warrant the transferor's title or the validity of the several documents which together establish his title 3. There is no estoppel where the secretary certifies without authority 4. The board of directors is generally the body which has authority to direct registration of transfers. The secretary has no implied authority from the directors or the company to register transfers 5. If a transfer of shares purporting to be fully paid up is certified, the shares being in fact only partly paid up, the company will be estopped from denying that the shares are fully paid up 6. The receipt, after lodgment of certificate, does not bind the company either to recognize the transferee's title to the shares or to issue the corresponding certificate 7.

In permitting the secretary to certify transfers, the company does not authorize him to do more than give a receipt for the certificate of shares. If the secretary gives a receipt or an acknowledgment for certificates which have not been lodged, the company is not estopped from setting up the true facts 8, nor is the company estopped from denying the alleged transferee's title on the ground of invalidity of the forged transfer 9, as the certification does not guarantee the title of the person lodging the certificate 10. If the secretary certifies a transfer when no certificates of the shares have in fact been lodged, his statement in that behalf is not in law the statement of the company 11.

A transfer wrongly certified confers no liability on the company 12. If the secretary instead of cancelling the deposited certificate parts with the same, the company would be liable for any loss occasioned thereby, but would incur no liability to a third person with whom the transferor might improperly pledge the certificate (see note 7). After registration of the transfer the original certificate should be destroyed, otherwise in case of fraud committed by the transferor, the company may be liable to the transferee if he has suffered any damage thereby; but the company is not liable to a third person 7.

For other cases bearing on the question of validity of transfers and their recognition by the company, see notes to s. 38, *post.*

Transfer in blank.

Where a transfer in blank has been used for effecting a transfer, the transferor cannot take a technical objection as to the filling in of the consideration to defeat the object for which he gave the transfer 13. But where a debtor delivers to his creditor a blank transfer by way of security, that does not enable the creditor to delegate to another person authority to fill it up for purposes

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1. Hyam's case [1859] 1 De G. F. & J. 75 C. A.
2. Clark v. Workman (supra).
3. Per Lindley L. J. in Bishop v. Balkis Consolidated Co. [1890] 25 Q. B. D. 512; Rivett-Carnac v. New Moffussil Co. [1902] 26 Bom. 54.
4. George Whitechurch Ltd. v. Cavanagh [1902] A. C. 117; Bishop v. Balkis Consolidated Co. (supra).
5. Chida Mines v. Anderson [1905] 22 T. L. R. 27.
6. Mackay's case [1896] 2 Ch. 757; George Whitechurch Ltd. v. Cavanagh (supra).
7. Longman v. Bath Electric Tramways [1905] 1 Ch. 646.
8. George Whitechurch & Co. v. Cavanagh (supra), per Lord Macnaghten at p. 125.
9. Rivett-Carnac v. Moffussil Bank (supra). 10. Ibid at p. 74.
11. Klienwort, Sons & Co. v. Associated Automatie Machine Corpn. [1934] 50 T. L. R. 244 (H.L.).
12. Manilal v. Gordhan Spinning &c. Co. [1917] 41 Bom. 76; Nagabhusanam v. Ramchandra [1922] 45 Mad. 537.
13. Indo-China Steam Navigation Co. [1917] 2 Ch. 100.

foreign to the original contract 1. If the owner of the certificate leaves it and an executed transfer with his broker who wrongfully pledges it with a bank, the title of the bank which had no notice of the fraud will prevail 2. But a transfer in blank executed by an executor, who had not registered himself as owner of the shares, will not have this effect 3. "Whatever may be the effect of an instrument so executed, one thing is clear that it cannot be regarded as either in law or by custom equivalent to a certificate and transfer executed by the registered owner himself" 3. In the last cited case Lord Watson observed : "Notwithstanding his having parted with the certificate and transfer, the original transferor, who is entered as owner in the certificate and register, continues to be the only shareholder recognized by the company as entitled to vote and draw dividends in respect of the shares, until the transferee or holder for the time being obtains registration in his own name. It would therefore be more accurate to say that such delivery passes not the property of the shares, but a title, legal and equitable, which will enable the holder to vest himself with the shares without risk of his right being defeated by any other person deriving title from the registered owner" 4 Where a person obtains possession by fraud of a share certificate and a transfer in blank executed by the owner, he cannot however pass a good title to a *bona fide* purchaser for value 5. But if a seller is induced to perform his part of a valid contract of sale and to deliver the goods to the buyer in performance of that contract by fraud or cheating on the part of the buyer, the property in the goods delivered passes to the buyer, and if he sells and delivers the goods to a *bona fide* purchaser for value without notice, it passes to such a purchaser 6.

Stamp.

Where a transfer has been passed by mistake and the transferee's name has been entered in the register of members, it may be corrected by the company and the register amended 7. The register however should not be altered on the basis of a transfer not duly stamped, and the directors are entitled to go behind what appeared on the face of the document 8. A company is not bound by the consideration stated in the transfer. Registration may properly be refused if the stamp is not adequate to the real consideration 8. But if a transfer is apparently stamped properly and the transferee's name is registered, an objection taken subsequently will not affect the transferor's title 9. For stamp duty on transfer see Appendix—"Stamp duty."

Priority of title.

As between two persons claiming title to shares registered in the name of a third person, priority of title prevails unless the claimant, second in point of time, can show that as between himself and the company, before the company received notice of the claim of the first claimant, the second claimant has acquired the full status of a shareholder, or at any rate that all the formalities have been complied with, and that nothing more than some ministerial acts remains to be done which the company could not refuse to do forthwith 10.

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1. France v. Clarke [1884] 26 Ch. D. 257.
2. Fuller v. Glyn, Mills, Curry & Co. [1914] 2 K. B. 168 ; Fazal v. Mangaldas [1921] 46 Bom. 489.
3. Colonial Bank v. Cady [1890] 15 App. Cas. 267, 279.
4. Ibid at pp. 277-78.
5. Hazari Mull v. Satish [1918] 46 Cal. 331 ; see s. 108 of the Contract Act.
6. Fazal v. Mangaldas [1921] 46 Bom. 489.
7. Anderson's case [1869] 8 Eq. 509.
8. Maynard v. Consolidated K. C. Corpn. [1903] 2 K. B. 121.
9. Indo-China Steam Navigation Co. (supra).
10. Sethna v. National Bank of India [1912] 36 Bom. 334 ; Moore v. North-Western Bank [1891] 2 Ch. 599 ; see also Peat v. Clayton [1906] 1 Ch. 659.

If none of the transfers are registered, the first in point of time has priority [1], and this priority is not lost because some ministerial act has not been done [2]. The onus is on the transferee, later in point of time, to show that he acquired the full status of shareholder earlier [3].

Deed is not necessary.

A transfer of shares need not be made by deed, unless the articles so require it [4]. (A deed means one signed, sealed and delivered) [5]. In such a case, in the absence of conduct estopping the party from disputing that he is a shareholder in respect of the shares transferred, the transfer is not valid without a deed [6]. There is no estoppel where the documents are *prima facie* complete [7].

Surrender of share.

It is not open to a shareholder to surrender his shares, or to the company to accept the surrender, unless the act of the company can be brought within the rules relating to forfeiture of shares [8]. A surrender of shares, the company releasing the shareholder from further liability in respect of the shares, is equivalent to a purchase of the shares by the company and is therefore illegal and void [9].

Share certificate.

In India share certificates are movable property within s. 108 of the Indian Contract Act [10]. Shares are "goods" also within the meaning of s. 76 of the same Act, and where the denoting numbers of the shares are not ascertained at the time of the contract, but share certificates are handed with transfer executed by the transferor (even in blank) and accepted by the purchaser, the shares become ascertained goods and the sale is complete [11]. "Title to get on the register consists in the possession of a certificate together with a transfer signed by the registered holder" [11]. Provisions in the articles authorizing the holders of scrips to pass shares by delivery are irregular and such a company may be ordered to be wound up [12]. If a shareholder disposes of his shares by invalid transfer, he remains liable in respect of those shares [13].

Position of purchaser at Court sale.

In *Manilal* v. *Gordhan Spinning Co.* [14] and *Nagabhusanam* v. *Ramchandra* [15] it was held that a purchaser of shares at a Court sale was in the same position as a transferee from a shareholder and therefore his right to have his name registered was subject to the discretion given to the directors to refuse registration of a transfer. But this has been doubted in a later decision [16] of the Madras High Court. Srinivasa Ayyangar and Anantha Krishna Ayyar, JJ. have in this case held that in the absence of anything in the articles forbidding the same, a sale by the Court of shares held by a member has the effect of transferring the shares to the purchaser and that the expression "transfer" is not by itself altogether appropriate to indicate a sale by the Court, and therefore any provision regarding voluntary transfer in the articles will not apply to transfer by a Court sale. They have further held that O. XXI, R. 80, C. P. C. is only permissive and it is not necessary, when a share of a company is sold in Court auction, that the Court should execute a transfer before the purchaser can be entitled to such share. Their Lordships are of opinion that this rule is applicable to cases where, for instance, specific performance of an agreement to sell shares has been decreed. But with great respect to the learned Judges it is submitted that the view taken by them of the articles in that case and of Rules 79 and 80 of Order XXI, C. P. C. do not appear to be correct. It is apprehended that to the case of a purchase at a Court sale of shares belonging to a deceased member, the articles relating to transfer of shares are more appropriate than those relating to transmission of shares. It may also be pointed out that Rule 80 forms part of a group of Rules which come under the heading "Sale of movable property"; so the words "where the execution of a document......is required to transfer such......share" probably mean that where such execution is required by the articles of association of the company.

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[1] Peat v. Clayton (supra).
[2] Moore v. North-Western Bank (supra) ; Ireland v. Hart [1902] 1 Ch. 522.
[3] Bunn's case [1860] 2 De G. F. & J. 275 ; Elkington's case [1867] 16 L. T. 301, 2 Ch. App. 511.
[4] London Founders' Assn. v. Clarke [1888] 20 Q. B. D. 576.
[5] In England the Companies Clauses Act, 1845 required a transfer of shares to be by deed, but since 1862 the language used in Table A has been "instrument in writing."
[6] Maynard v. Consolidated K. C. Corpn [1903] 2 K. B. 121.
[7] Balkis Consolidated Co. [1888] 58 L. T. 300.
[8] In re Mirza Ahmad [1924] M. W. N. 582, 83 I. C. 94 ; Bellerby v. Rowland &c. Co. [1902] 2 Ch. 14 ; Denver Hotel Co. [1893] 1 Ch. 495.
[9] Bellerby v. Rowland &c. Co. [1902] 2 Ch. 14, at p. 25 ; Trevor v. Whitworth [1887] 12 App. Cas. 409 ; Vazirmal v. Makran Coast Steam Navigation Co. [1938] Sind 187.
[10] Fazal v. Mangaldas [1921] 46 Bom. 489 ; Hazari Mull v. Satish [1918] 46 Cal. 331.
[11] Maneckji v. Wadilal Sarabhai &c. Co. [1926] 53 I. A. 92, 50 Bom. 360, 30 C. W. N. 890, 43 C. L. J. 508.
[12] Princess of Reuss v. Bos [1871] L. R. 5 H. L. 176.
[13] Buckley, 10th ed. p. 42.
[14] Manilal v. Gordhan Spinning &c. Co. [1917] 41 Bom. 76.
[15] Nagabhusanam v. Ramchandra [1922] 45 Mad. 537.
[16] Mohideen v. Tinnevelly Mills Co. [1928] M. 571, 28 M.L.W. 982, 111 I.C. 225.

Situs of share.

The true test of the *situs* of a share for the purpose of jurisdiction is—"Where could the shares be effectively dealt with" 1, that is where there is a branch office for registration of transfer of shares and not necessarily the head office 1. Following the last cited cases, the Judicial Committee have held that the test which must be applied to determine the local situation of shares is where the shares can be effectively dealt with: where a transfer of the shares must be effected by a change in the register of members, the place where the register is to be kept under the law determines the locality of the shares 2.

For the definition and meaning of "share" see s. 2 (1) (16) and notes thereto.

For other cases see notes to s. 38 and regulations 18 and 20 of Table A.

Shares of companies registered under Act XIX of 1857 and Act VII of 1860 were transferable in the manner then in use or in such other manner as the company might direct.

Certificate of shares or stock.

29. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock therein specified.

For definition of "share" see s. 2 (1) (16) *ante*,

Meaning of stock.

"Stock" is the aggregate of fully paid up shares legally consolidated and portions of which aggregate may be transferred or split up into fractions of any amount without regard to the original nominal amount of shares 3. When shares have been fully paid up, they may be turned into stock and notice of this must be given to the registrar 4. The issue of a partly paid up stock is void 5. A forged transfer of stock does not affect the title of the stock-holder 6.

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1. Brassard v. Smith [1925] A.C. 371 at p. 376; A. G. v. Higgins [1857] 2 H. & N. 33.
2. Erie Beach Co. v. A. G. of Ontario [1930] A. C. 161 P. C., [1930] P. C. 10; Ahmed v. Collector of Surat [1939] B. 447, 41 Bom. L. R. 934.
3. Morrice v. Aylmer [1875] L. R. 7 H. L. 717.
4. Section 51.
5. Home & Foreign Investment Co. [1912] 1 Ch. 72.
6. Davies v. Bank of England [1824] 2 Bing. 393.

Certificate of shares.

The certificate of shares is the documentary evidence in the possession of the shareholder[1]. It is not a negotiable instrument or warranty of title by the company[2]. But if a *bona fide* purchaser for value acquire the shares relying on a certificate, the company will be estopped from denying the validity of the certificate[3], even if the transfer be a forged one[3]. The measure of damages is the value of the shares at the time the company first refused to recognize him as a shareholder[3]. But the payment of dividend does not estop the company from denying the payee's title to the shares[4]. If the company authorize the issue of a certificate to a person, it is however estopped from denying his title[5], and if the company is unable to give him the shares, it will be liable in damages[6]. On the other hand, if an officer of the company issues certificates without authority, there will be no estoppel[7]. The company may however be liable in damages for the fraud of its officers committed within the scope of their authority[8].

The certificate is a statement as against the company that the person, whose name appears on it, is the registered holder of the shares[9], and in the case of a *bona fide* purchaser for value without notice, that the amount certified to be paid has been paid[10]. The company is not however estopped from denying the purchaser's title by the mere fact that it has treated him as a shareholder by sending him a dividend warrant[11]. Where the certificate contained a statement that the shares were fully paid up, the onus lay on the liquidator to show that the party sought to be made liable had notice that they were not so[12]. The company will not be liable on share certificates to which the secretary has forged the directors' names[13].

A foot-note under the share certificate to the effect that before a transfer is registered the certificate must be produced is only a warning. As it is not addressed to outsiders it does not create a contract or estoppel[14]. A director, by being merely present at a meeting at which a certificate is passed, is estopped from denying its accuracy[15].

Seal.

The mere affixing of the seal is sufficient without witnesses, unless the articles of association provide otherwise. Where there is a common seal put to a deed, that is title enough of itself without witness to prove it, and if it be said that it was put to by the hand of a stranger, that shall be proved on the side that says

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1. Societe Generale de Paris v. Walker [1885] 11 App. Cas. 20; Burkinshaw v. Nicolls [1878] 3 App. Cas. 1004, 1027: followed in A. W. Hall & Co. [1887] 37 Ch. D. 712.
2. Longman v. Bath Electric Tramways [1905] 1 Ch. 646 C.A.; Hazari Mull v. Satish [1918] 46 Cal. 331.
3. Bahia &c. Ry. Co. [1868] L. R. 3 Q. B. 584, 595; Ottos Kopje Diamond Mines [1893] 1 Ch. 618; Ruben v. Great Fingall Consolidated Co. (infra).
4. Foster v. Tyne Pontoon &c. Co. [1894] 63 L. J. (Q. B.) 50.
5. Dixon v Kennaway & Co. [1900] 1 Ch. 833.
6. Tomkinson v. Balkis Consolidated Co. [1891] 2 Q. B. 614; on appeal [1893] A. C. 396.
7. Ruben v. Great Fingall Consolidated Co. [1904] 2 K. B. 712, affirmed in the House of Lords [1906] A. C. 439.
8. Lloyd v. Grace Smith & Co. [1912] A. C. 716.
9. Bahia &c. Ry. Co. (supra); Tomkinson v. Balkis Consolidated Co. (supra).
10. Burkinshaw v. Nicolls (supra); Bush's case [1874] 9 Ch. App. 554; Bloomenthal v. Ford [1897] A. C. 156; Markham & Darter's case [1899] 1 Ch. 414.
11. Foster v. Tyne Pontoon &c. Co. [1894] 63 L. J. (Q. B.) 50.
12. A. W. Hall & Co (supra); Burkinshaw v. Nicolls (supra); see also Bloomenthal v. Ford (supra) & Balkis &c. Co. v. Tomkinson [1893] A. C. 396.
13. Ruben v. Great Fingall Consolidated Co. [1906] A. C. 439.
14. Rainford v. James Keith, Blackman & Co. [1905] 1 Ch. 296; reversed on facts [1905] 2 Ch. 147; Guy v. Waterlow [1909] 25 T. L. R. 515.
15. Dixon v. Kennaway & Co. (supra).

so [1]. Proof of the seal may be given by any one who knows it, and it is not necessary to call a person who saw it affixed [2]. When a deed is found to be sealed, the presumption is that the seal was regularly affixed, and the onus is on the person who alleges the contrary [3]. "It is not necessary," as was observed by Lawrence J., "to prove the seal of a corporation in the same manner as the seal of an individual, by producing the witness who saw the seal affixed; but when an instrument having a seal affixed to it, purporting to be a corporate seal, is produced in evidence, it is necessary to prove that it is the seal of the corporation, if there be any doubt about it; otherwise any instrument with a seal to it might be produced in Court as an instrument sealed by the corporation" [4].

A person having power to manage the affairs of a trading company has implied power to affix the seal [5]. Negligence of a company in leaving the seal in the custody of a dishonest person will not preclude it from pleading that the seal was wrongfully affixed, and a forgery gives no title [6]. Where a secretary to aid his own fraud wrongfully affixed the seal to share certificates apparently in the ordinary course of business, the company came under no liability to honest holders of the certificates [7]. Where the certificate is not sealed by the company's authority, it amounts to a forgery and is not binding upon the company [8]. See Reg. 76 of Table A and notes thereto.

Statements in share certificate.

If it is stated in the certificate that the shares are fully paid, the company or its liquidator is estopped from alleging that they are not fully paid up [9]. But a person, who knew that the shares were not fully paid, cannot take advantage of the statement in the certificate [10]. The fact that the shareholder's partner is a director of the company does not however amount to a constructive notice that the shares are not fully paid [11]. Even a director may be protected by a certificate stating them to be fully paid and signed by himself, if he acted in good faith [11].

Delivery.

Delivery of the share certificate may be conditional and may take effect only upon some event happening, e. g., upon the consideration being paid. In that case until the condition is fulfilled the document is an escrow or scrip and has no effect as a deed [12]. As to escrow generally see *Foundling Hospital* v. *Crane* [13].

Where a debtor assigned all his properties to trustees for his creditors, but retained the share certificates and subsequently sold the shares to a purchaser for value, the title of the trustees who had given notice to the company prevailed [14].

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[1] Brounkar v. Atkyns [1681] Skinner 2.
[2] Moises v. Thornton [1799] 8 T.R. 307.
[3] Clarke v. Imperial Gas Co. [1832] 4 B. & Ad. 315.
[4] Moises v. Thornton (supra).
[5] Biggerstaff v. Rowatt's Wharf [1896] 2 Ch. 93.
[6] Merchants of the Staple v. Bank of England [1888] 21 Q.B.D. 160.
[7] Ruben v. Great Fingall Consolidated Co. (supra).
[8] South London G. Racecourses, Ltd. [1931] 1 Ch. 496, 144 L.T. 607.
[9] Bloomenthal v. Ford [1897] A.C. 156.
[10] African Gold Concessions &c. Co. [1899] 1 Ch. 414.
[11] Coasters Ltd. [1911] 1 Ch. 86.
[12] Spitzel v. Chinese Corporation [1899] 80 L.T. 347, 15 T.L.R. 281.
[13] [1911] 2 K.B. 367.
[14] Peat v. Clayton [1906] 1 Ch. 659.

S. 108.

The certificate of all shares must be ready for delivery within three months after allotment of shares or registration of transfers, unless the conditions of issue provide otherwise [1]. A shareholder is entitled to get his certificate within a reasonable time [2]. See s. 108 and notes thereto.

Duplicate certificate.

Where a company, having no notice of bankruptcy of a shareholder, issued a duplicate certifiate to his executrix on the representation that the original certificate was lost, while it really was in the possession of the bankrupt's assignee, and then the executor transferred the shares and the transfer was registered by the company, it was held that the purchaser's title was a legal title and prevailed against the assignee [3]. A good equitable charge may be created by the deposit of a share certificate [4].

Definition of "member."

30. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Who are members.

The members of a company are those persons who collectively constitute the company. A member is not necessarily a shareholder, for an unlimited company or a company limited by guarantee may exist either with or without a share capital [5]. But in the case of a company limited by shares the terms "member" and "shareholder" are synonymous [6]. The word "member" includes a deceased member so long as his name is on the register of members [7].

Contract of subscriber.

"The contract of the subscriber of a memorandum of association", said Buckley J., "is of a very peculiar kind. Down to the moment when the memorandum and articles are taken to Somerset House to be registered there is no contract at all, because the company does not exist, and any contract by the signatories must be with the corporation. At the moment of registration two things take place by force of the Companies Act, 1862; the company springs into existence, and the subscribers to the memorandum of association become by virtue of s. 23 of that Act (s. 30 of the Indian Act), members of the company. There is no executory contract which is subsequently executed. There is no contract at all until the moment when the corporation and the character of membership in the signatories to the memorandum come simultaneously into existence. I must therefore hold that the subscriber to the memorandum cannot have rescission on the ground that he was induced to become a subscriber by the misrepresentation of an agent of the company" [8]. Again: "The contract effected by the signature of the memorandum and registration of the company is not merely a contract created between the subscriber and the company. It is a contract whose existence is the basis of the creation of the corporation as one of the contracting parties, and every other person who becomes a member becomes such on the footing that that contract exists" [1].

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[1] S. 108.
[2] Burdett v. Standard Exploration Co. [1900] 16 T.L.R. 112.
[3] London & P. Telegraph Co. [1870] 9 Eq. 653.
[4] George Whitechurch Ltd. v Cavanagh [1902[A.C. 117, 126.
[5] South London Fish Market Co. [1888] 39 Ch.D. 324 C.A.
[6] Palmer, 13th ed., p. 97.
[7] James v. Buena Ventura &c. Syndicate [1896] 1 Ch. 456.
[8] Lord Lurgan's case (infra).

Obligation of subscriber to memo.

Each subscriber to the memorandum of association irrevocably agrees to take from the company the number of shares placed opposite to his signature [2], and he becomes a member *ipso facto* whether his name is entered in the register or not [3], unless all the shares of the company have been duly allotted to others [4]. This obligation is not satisfied by the allotment at a subsequent period of nominally fully paid shares [5]. The present of fully paid shares by a third party does not satisfy the subscriber's obligation in this respect. The issue of the certificate does not estop the company, so long as the certificate has not passed to a *bona fide* purchaser for value [6]. When shares are available for allotment, the fact that none has been allotted to the subscriber makes no difference and the liquidator is entitled to hold him to the contract [6]. A subscriber to the memorandum cannot repudiate his subscription on the ground that he was induced to sign by misrepresentation [7]. Unless otherwise agreed, the subscriber is however only bound to pay when calls are made [8]. The first portion of sub-s. (1) lays down a rule of substantive law and the second portion a rule of procedure [9]. The words "shall be deemed to have agreed to become members of the company" mean that the subscribers of the memorandum are to be treated as having become members by the fact of the subscription [10]. The first directors are bound to see if the allotment is made in their names. They cannot avoid their liability to pay for the shares by pleading their own default or negligence in not making the allotment to themselves [11].

Liability of subscriber.

The statutory liability of a subscriber to the memorandum of association commences with the signature, and it is not held in suspense until the memorandum is registered. There is no *locus penitentiœ* up to the date of ragistration, and the subscriber cannot, acting independently of the others, cancel his signature even on the ground of misrepresentation of the promoter [12]. He is liable, whether his name has been entered in the register of members or not [13]. When a subscriber subsequently applies for and receives allotment of a number of shares, they may be

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1. Lord Lurgan's case (infra).
2. Alexander v. Automatic Telephone Co. [1900] 2 Ch. 56 ; Drummond's case [1869] 4 Ch. App. 772 ; Pell's case [1870] 5 Ch. App. 11.
3. J.H. Chandler & Co. [1926] 48 All. 580, 24 A.L.J. 691, [1926] A. 550 following Machine Exchange Co. [1888] 12 Bom. 311 ; Whitehead & Bros. Ltd. [1900] 1 Ch. 804 ; Lord Lurgan's case [1902] 1 Ch. 707 ; Vazirmal v. Makran Coast S. Navgn. Co. [1938] S. 187.
4. Mackley's case [1875] 1 Ch. D. 247 ; Tuffnell's case [1885] 29 Ch. D. 421 ; Evans's case [1867] 2 Ch. App. 427 ; London P. C. Coal Co. [1877] 5 Ch. D. 525 ; Naraindas Lahoredas [1934] S. 39, 149 I.C. 869 ; Snell's case [1869] 5 Ch. App. 22 ; Hall's case [1870] 5 Ch. App. 707.
5. South Blackpool Hotel Co. [1867] 4 Eq. 238.
6. Elmore's case [1889] 13 Bom. 57.
7. Lord Lurgan's case [1902] 1 Ch. 707.
8. Alexander v. Automatic Telephone Co. (supra).
9. J.H. Chandler & Co. (supra).
10. U. P. Oil Mills v. Jamna Prasad [1933] A. 334, [1933] A. L. J. 233.
11. Naraindas Lahore Das (supra) ; Bellerby v. Rowland & Marwood's Steamship Co. [1902] 2 Ch. 14 at pp. 25, 27 and 32 ; Trevor v. Whitworth [1887] 12 App. Cas. 409 ; Vazirmal v. Makran Coast S. Navgn. Co. (supra).
12. Machine Exchange Co. (supra) ; Lord Lurgan's case (supra) ; Banwari Lal v. Kundan Cloth Mills [1937] L. 527.
13. Tyddyn &c. Co. [1869] 20 L. T. 105 ; Evans's case [1867[2 Ch. App. 427 ; London P. C. Coal Co. [1877] 5 Ch. D. 525.

treated as a satisfaction *pro tanto* of his obligation under the memorandum[1]. In a recent Madras case it has been held that even in the case of a subscriber to the memorandum of association, liability to pay for the shares does not arise, unless and until there is a valid allotment of the shares[2]. But the correctness of this view is doubtful.

Where the memorandum and the articles of association registered are not a true copy of the original signed by a person as subscriber, he is not a member of the company as a subscriber; nor is he a member under cl. (2) of the section as the agreement referred to therein must be one entered into after the company has been registered[3]. When a person signs a duplicate of the memorandum after the registration of the original, he does not thereby become a subscriber. But such signature may be equivalent to a proposal to take shares, and if accepted, he will be regarded as a member and will be liable to calls when entered on the register of members[4]. He may however withdraw before his name is put on the register or an allotment is made to him[5]. Acceptance in such a case may be by allotment of shares or by putting his name on the register of members; it cannot be inferred from the circumstances of the case[6]. The present of fully paid up shares by the promoter does not satisfy the obligation of the subscriber, nor does the issue of share certificate estop the company, so long as the certificate has not passed to a *bona fide* purchaser for value. The company in such cases can prove non-payment and claim the value of the shares[12]. When there are shares available for allotment, the fact that none has been allotted to the subscriber makes no difference[6].

As the contract is to take the shares from the company, the obligation of a subscriber is not satisfied by taking them from some one else[7]. Lapse of time will not relieve the subscriber[8]. An alteration in the articles made after signature and before registration may discharge the subscriber from liability[9].

A subscriber remains a member of the company until such time as either he validly surrenders the shares or pays for the shares and validly transfers them to somebody else[10].

When shares are deemed to be issued.

Shares subscribed by the signatories to the memorandum of association are deemed to be issued when the company is registered[11]. As regards other shares, when a person is entered on the register of members as a shareholder, the shares are regarded to have been issued to him, although he has not obtained the share certificate[12]. In the case of subscribers to the memorandum of association, neither allotment nor entry on the register is necessary[13]; the only way he can possibly escape liability is by showing that all the shares have been duly allotted to other persons [1]. A subscriber cannot repudiate the shares on the ground of misrepresentation, for at the time of his signature to the memorandum the company was not in existence [2].

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[1] Gilman's case [1886] 31 Ch. D. 420.

[2] Synemodelux v. Vannamuthu [1938] M. 498, [1939] 1 M. L. J. 534.

[3] Guzrati S. & W. Co. v. Girdharlal [1881] 5 Bom. 425.

[4] Bombay N. Manufacturing Co. v. Ahmed [1889] 14 Bom. 196.

[5] Imperial Flour Mills Co. v. Lamb [1888] 12 Bom. 647; see Imperial Ice Manufacturing Co. [1889] 13 Bom. 415. It was held in this case that where the defendant signed the duplicate of the memorandum of association he was not to be regarded as a shareholder and that ss. 23 (*h*) and 27 (*c*) of the Specific Relief Act do not apply to contracts to take shares.

[6] Nusservanji's case [1888] 13 Bom. 1.

[7] Migotti's case [1867] 4 Eq. 238; Fothergill's case [1873] 8 Ch. App. 270; Dent's case [1873] 8 Ch. App. 768.

[8] Levick's case [1871] 13 L. T. 838; Sidney's case [1872] 13 Eq. 228; Tooth's case [1868] 19 L. T. 599.

[9] Felgate's case [1865] 2 De G. J. & S. 456; Peel's case [1867] 2 Ch. App. 674.

[10] U. P. Oil Mills Co. [1931] A. 701, 133 I. C. 424.

[11] Dalton Time Lock Co. v. Dalton [1892] 66 L. T. 704 C. A.

[12] See Nicol's case [1885] 29 Ch. D. 421.

[13] Nicol's case [1885] 29 Ch. D. 421; Alexander v. Automatic Telephone Co. [1900] 2 Ch. 56.

Application for shares and allotment.

An application for shares is an offer and like any other offer must not only be accepted, but the acceptance must be communicated to the person making the offer ; hence a mere entry of a shareholder's name in the company's register is insufficient to establish that an allotment of shares has in fact been made [3]. Where an unreasonable delay is made in making allotment and the letter of allotment is posted just before the company went into liquidation, it was held that the applicant for the shares was not a member [4]. When an agent of a company asks a person to take shares and the latter signs an application, the proposal comes from the company and is accepted by the other party ; thus there is a complete contract under ss. 2 (a) and (b), 3 and 10 of the Indian Contract Act. Where an application for shares is subject to a condition precedent, that condition must be fulfilled [5]. But where the application is subject to a condition subsequent, such as that the applicant need not pay for the shares unless dividend is paid, the liability arises, although the condition is never fuifilled. A person who takes shares on the condition that "in the event of the company not making a profit, shares were not to be paid for at all" is a "bogus" shareholder and this is opposed to the whole object of the Companies Act [6]. As to an application for shares by an agent, see the cases noted below [7].

How membership is constituted.

In order to constitute membership, entry in the register of members under the next following section is necessary [8], except in the case of signatories to the memorandum, or where there is a subsisting contract to take shares capable of being specifically enforced [9]. A person who is not entered on the register will be liable if he has agreed to become a member, for the register can be rectified by placing his name on it. On the other hand, a person whose name is wrongfully removed from the register remains a member [10]. If a person who has not agreed to take shares is put on the register, he does not become a member [11]. The entry of a person's name on the register casts the onus on that person to prove that he was not duly a member of the company [12]. Upon winding up of the company he will be put on the list of contributories if he knew that he was entered in the register of members and took no steps to have his name removed [12].

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[1] Mackley's case [1875] 1 Ch. D. 247 ; Evans's case [1867] 2 Ch. App. 427. See also Tuffnell's case [1885] 21 Ch. D. 421.

[2] Lord Lurgan's case [1902] 1 Ch. 707.

[3] Bellary Electric Supply Co. v. Kanniram [1933] M. 320, 64 M. L. J. 130, 141 I. C. 120 ; see also Universal Banking Corpn. [1867] 3 Ch. App. 40.

[4] Radhe Sham Beopar Co. v. Prabh Dyal [1936] L. 16, 161 I. C. 294 ; Ramsgate Hotel Co. v. Montefiore [1866] 13 L. T. 715.

[5] Mahendra v. Lachman [1913] 35 All. 538 ; Indian Merchants Bank v. Jogindra Singh [1928] L. 234, 108 I. C. 192 ; Ibid v. Anup Chand [1928] L. 236, 107 I. C. 492.

[6] Motilal v. Thakorelal [1912] 36 Bom. 557, 14 Bom. L. R. 648.

[7] Bird's case [1864] 4 De G. J. & S. 200 ; National Coffee Palace Co. [1883] 24 Ch. D. 367.

[8] Mac Donald, Sons & Co. [1894] 1 Ch. 89 C. A.

[9] Winstone's case [1879] 12 Ch. D. 239 ; Arnot's case [1887] 36 Ch. D. 702, 707.

[10] Barton v. London & N. W. Rail Co. [1890] 24 Q. B. D. 77.

[11] Ormerode's case [1894] 2 Ch. 474.

[12] Amar Singh v. Khalsa Bank [1933] L. 108.

Oral application and withdrawal.

An oral application for shares is as effectual as a written application [1]. Withdrawal may also be made by word of mouth [2]. Withdrawal by post is not effective unless it reaches the company before the notice of allotment is actually posted [3]. An applicant for shares can withdraw at any time before his offer has been accepted [4]. An offer is deemed to be accepted as soon as the allotment letter is posted [5]. If the allotment letter contains any term which was not in the application, there is no contract [6]. If after the application an allotment is not made within a reasonable time, the applicant is not bound to accept the shares [7]. The application may be made to the company's agent [8].

Authority "coupled with interest."

An agent is held out as having authority and he can apply for shares in the principal's name [9]; and if the shares are allotted in the principal's name, he becomes a shareholder [10]. Where a company makes allotment of shares on the written authority of a person, he may be estopped from saying that the authority was limited by private instructions [11]. But an application by a person not having authority does not make the supposed principal a member [12]. An authority coupled with an interest, *e.g.*, given for valuable consideration, is irrevocable, and an underwriting letter containing authority for some person to apply in the name of the underwriter, when duly accepted, cannot be revoked [13].

Contracting without authority.

A person who purports to contract as agent for another, not having authority, does not himself become a member, but is liable to the company in damages for breach of warranty of his authority [14]. There is no contract where an agent applies by mistake in the name of the principal in the wrong company, or where by the fraud of the company [14] or of its agent the applicant is led to believe that he is contracting with a different company [15].

In England an infant's agreement to take shares is voidable at his election on his

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1. Cookney's case [1859] 3 De G. & J. 170 ; Bloxam's case [1864] 4 De G.J. & S. 447 ; Levita's case [1867] 3 Ch. App. 36 ; Olympic Re-insurance Co. [1920] 1 Ch. 582, on appeal 2 Ch. 341.
2. Truman's case [1894] 3 Ch. 272.
3. Byrne & Co. v. Van Tienhoven [1880] 5 C. P. D. 344 ; Henthorn v. Fraser [1892] 2 Ch. 27. If the letter is posted to some one else, not an agent, it is not effective ; see Hebb's case [1867] 4 Eq. 9.
4. Ritso's case [1877] 4 Ch. D. 774 ; Wilson's case [1869] 20 L.T. 962 ; Dickinson v. Dodds [1876] 2 Ch. D. 463 ; Pellatt's case [1867] 2 Ch. App. 527, 535, where Lord Justice Cairns said : "Where an individual applies for shares in a company, there being no obligation to let him have any, there must be a response by the company ; otherwise there is no contract." But where the applicant has a right to allotment, the application makes the contract ; see Tucker's case [1874] 41 L.J. Ch. 157 ; Adam's case [1872] 13 Eq. 474.
5. Household Fire &c. Insurance Co. v. Grant [1879] 4 Ex. D. 216, 41 L. T. 298.
6. Duke v. Andrews [1848] 2 Ex. 290.
7. Carmichael's case [1896] 2 Ch. 643 ; Ex p. Bailey [1868] 3 Ch. App. 592.
8. Forget v. Cement Products Co. [1916] W. N. 259.
9. Levita's case [1870] 5 Ch. App. 489 ; Duff's Executor's case [1886] 32 Ch. D. 301 ; Henry Bentley & Co. [1893] 69 L. T. 204.
10. Ex p. Harrison [1893] 69 L. T. 204, [1896] 2 Ch. 643 ; Hindley's case [1896] 2 Ch. 121.
11. Henry Bentley & Co. (supra).
12. Coventry's case [1891] 1 Ch. 202.
13. Ex p. Harrison (supra) ; Hindley's case (supra) ; Olympic Re-insurance Co. [1920] 2 Ch. 341.
14. National Coffee Palace Co. [1883] 24 Ch. D. 367.
15. International Society of Auctioneers, Baillie's case [1898] 1 Ch. 110.

Infant's agreement.

attaining majority [1]. But if the shares are registered in his name, and after attaining majority he acts as shareholder [2], or does not within a reasonable time repudiate the shares, he cannot afterwards do so [3]. Under the Indian Contract Act an infant's contract is however altogether void [4]. But a transfer in favour of a minor is not void [5], although a contract to take share on behalf of a minor cannot be specifically enforced either for or against him [6]. So it appears that a minor may become a shareholder if shares are transferred to him [2]; but the company may refuse to accept him as a shareholder [7]. Even where after the transfer, the minor's name was placed on the register in ignorance of his minority, the official liquidator could refuse to accept him as a shareholder, although after coming of age the minor was willing to confirm the transfer [8]. Where a director procured an allotment to his infant children who were at the time of winding up of the company still minors, he was held liable to make good the loss caused to the company by its inability to enforce calls [9]; for a transferee is liable for the unpaid balance of his shares [10]. It has been held that a minor could be a member under Act VI of 1882 [11]. If he intentionally permits the company to believe him to be a shareholder and in that belief to pay him dividends since he attained majority, he is estopped by his conduct from denying that he is a shareholder [11]. If the minor repudiated his shares on attaining majority, he could not recover any sum he had paid to the company in respect of the shares [12]; but he could not, even while an infant, retain the shares without accepting the burdens, *e.g.*, the liability for calls [13].

Application in a fictitious name.

If a person apply for shares in a fictitious name and shares are allotted in that name, he will be liable as a member [14]. The same result follows where the application is made in the name of a person incapable of accepting the shares [15]. In these cases however there must be an intention of contracting [16]. A person who agrees to place shares does not become a member [17].

A company may become a member of another company, if the former is authorized by its memorandum of association to take shares, or if it takes the shares in

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[1] Hamilton v. Vaughan Sherrin &c. Co. [1894] 3 Ch. 589; Laxon & Co. [1892] 3 Ch. 555.

[2] Lumsden's case [1868] 4 Ch. App. 31; it was held in this case that a transfer to an infant is not void but voidable.

[3] Ebett's case [1870] 5 Ch. App. 302.

[4] Mohori Bibi v. Dharmadas Ghose [1903] 30 Cal. 539, 30 I.A. 114.

[5] Raghava v. Srinivasa [1917] 40 Mad. 308 F.B.; Madhab v. Baikuntha [1919] 4 Pat. L. J. 682; Ulfat v. Gouri Sanker [1911] 33 All. 657; Narain Das v. Musst. Dhania [1916] 38 All. 154; Munni Kunwar v. Madan Gopal [1916] 38 All. 62; Hari Mohan v. Mohini [1916] 22 C. W. N. 130.

[6] Mir Sarwarjan v. Fakhruddin [1912] 39 Cal. 232 P. C., 39 I. A. I.

[7] Symon's case [1870] 5 Ch. App. 298.

[8] Symon's case (supra).

[9] Crenver &c. Co., ex. p. Wilson [1873] 8 Ch. App. 45.

[10] Weickersheim's case [1873] 8 Ch. App. 831.

[11] Fazlbhoy v. Credit Bank [1914] 39 Bom. 331; see also Yoland Consols Ltd. [1888] 58 L. T. 922.

[12] Steinberg v. Scala (Leeds) Ltd. [1923] 2 Ch. 452, overruling Hamilton v. Vaughan Sherrin &c. Co. (supra).

[13] North-West Railway Co. v. M' Michael [1850] 5 Ex. 114.

[14] Klondyke Gold Co. [1899] W. N. I.

[15] Pugh & Sharman's case [1872] 13 Eq. 566.

[16] Cundy v. Lindsay [1878] 3 App. Cas. 459.

[17] Gorrissen's case [1873] 8 Ch. App. 507; Conventry's case [1891] 2 Ch. 202 C.A.

A company becoming member of another company.

payment of a debt by way of compromise[1]. But a company cannot acquire its own shares, even if expressly authorized so to do by its memorandum[2]. A partnership firm is not a "person"[3], and the partners have no right to be registered as members in the firm name[4].

Mortgagee of shares.

A person, who lends money to a company on a mortgage of its shares, may become liable as a member in respect of those shares, if he takes the shares on condition that upon repayment the shares will be transferred to a nominee of the company[5].

Contract to take shares.

In the case of an ordinary member of the public, the contract to take shares is complete when an application has been submitted and allotment on the footing of that application has been made and the notice of the allotment has been communicated to the applicant. In the case of a director the company is under obligation to allot shares. In such cases it often happens that the company is regarded as making an offer to the director to take shares; the director's subsequent application for shares is an acceptance of that offer, and when the application is made, the contract is complete[6]. Where a director has been given shares, or shares have been transferred to him as qualification for his directorship, it makes the transferee a member of the company. And if such person hold out that he is a shareholder, he is estopped from denying his membership where the company goes into liquidation, on the ground that the transfer was a mere colourable transaction[7]. Where a person who consents to become a shareholder on condition that his suggestions will be included in the memorandum and articles of association, and despite the promoters' failure to carry out the suggestions he signs the usual application for shares and becomes a shareholder, it is not open to him subsequently to object to his being a shareholder on the ground of the conditions aforesaid not having been fulfilled. The proper time to raise the objection was at the time of incorporation of the company[8]. A valid executory contract for the allotment of shares is constituted by offer and communicated acceptance before allotment is made. If however, the only facts are that there is application for shares and nothing further is done by the company but allotment, there is no conclusive contract until the allotment is communicated to the applicant[9]. If there was in fact no contract to take shares, the supposed member can at any time (i.e., before the rights of creditors have intervened on winding up) have his name removed from the register, for he was never really a member[10]. The repudiation or avoidance of a contract to take shares on the ground of undue influence, fraud or misrepresentation, must be made by the shareholder within a reasonable time and before the commencement of the winding up proceedings[11]. Mere placing the name on the share register is not sufficient to fasten liability on a person who had no knowledge[12]. A few months before the decision in *Oakes* v. *Turquand* 1 it was decided by the House of Lords that where a person was induced to take shares by fraudulent misrepresentation, he was never a member and was entitled to repudiate and treat as null and void all which he was induced to do 2. But this case was distinguished in *Oakes* v. *Turquand* 1 on the ground that the former was a case between a shareholder and the company, and it had no application to a case where the question was between a shareholder and the creditor 3.

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[1] Lands Allotment Co. [1894] 1 Ch. 616.

[2] Trevor v. Whitworth [1887] 12 App. Cas. 409.

[3] Sadler v. Whiteman [1910] 1 K. B. 868 at p. 889.

[4] Vagliano A. Collieries [1910] W. N. 187, 103 L. T. 211; but see Weikersheim's case (infra).

[5] Addison's case [1870] 5 Ch. App. 294.

[6] Sadiq Hasan v. Mumtaz Bank [1929] L. 656, 123 I. C. 92.

[7] Mulk Raj v. Peoples Bank of Northern India [1936] Lah. 480.

[8] In re East Bengal Sugar Mills [1941] C. 143, [1941] 2 Cal. 175.

[9] Bai Mangu v. Bharat Khand Cotton Mills Co. [1930] P. C. 134, 32 Bom. L. R. 812, 32 C. W. N. 585, 51 C. L. J. 439; Gunn's case [1867] 3 Ch. App. 40.

[10] Oakes v. Turquand [1867] 2 H. L. 325; Alabaster's case [1869] 7 Eq. 273.

[11] In re Jagannath Prasad [1938] A. 193.

[12] Alabaster's case (supra).

Although the contract under which a person took shares could not have been enforced against him as he had, with knowledge that his name was on the register, dealt with them as if he had been a member and assented to keep them, he was liable to pay the whole amount of the shares in cash notwithstanding his misapprehension as to the legal effect of the contract he had originally entered into 4. A contract to take shares cannot be vitiated because a collateral agreement happens to be unenforceable in law 5. Motive can never be enquired into in considering the validity or otherwise of a contract 6. But where it is impossible to sever the contract from an illegal contract for the payment of the purchase price, the two documents in fact constituting one contract, the company is not entitled to recover the price of the shares 7.

One partner can accept shares so as to bind the firm 8.

When shares are subscribed by a person on a certain condition, if that condition is not fulfilled, he cannot be regarded as a member but may be a creditor 9.

Inchoate title.

Where a person has neither a complete legal title to the shares, nor as between himself and the company an unconditional right to be registered as a shareholder, his title being inchoate only, it is not sufficient to defeat the preexisting equitable title of another person 10.

Illegal contract.

"No Court", observed Lord Justice Lindley, "ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the Court, and if the person invoking the aid of the Court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality, the Court ought not to assist him" 11.

Making market for shares.

An agreement between two or more persons to purchase shares in a company, in order to induce persons who might thereafter purchase shares in such company to believe, contrary to the facts, that there was a *bona fide* market for its shares, and that the shares were at a real premium, is an illegal transaction, and may be made the subject of an indictment for conspiracy, and no action can be maintained in respect of such agreement or purchase of shares 11.

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1. Oakes v. Turquand [1867] 2 H.L. 325 ; Alabaster's case [1869] 7 Eq. 273.
2. Venezuela Ry. Co. v. Kisch [1867] L. R. 2 H. L. 99.
3. Oakes v. Turquand (supra) at p. 367.
4. Railway T. T. Publishing Co. [1889] 42 Ch. D. 98.
5. Dehra Dun Mussorie Electric Tramways Co. [1930] A. L. J. 139, [1930] A. 357, 52 All. 406.
6. Ibid ; Thomas v. Thomas [1877] 2 Q. B. 358.
7. Kenyon v. Darwen Cotton Manfg. Co. [1936] 2 K. B. 193.
8. Weikersheim's case [1873] 8 Ch. App. 831.
9. Mahendra v. Lachman [1913] 35 All. 538.
10. Roots v. Williamson [1888] 38 Ch. D. 485.
11. Scot v. Brown, Doering, Mc Nab & Co. [1892] 2 Q. B. 724 ; Reg. v. Aspinall [1876] 36 L. T. 297.

Cesser of membership.

Cesser of membership takes place by the sale of the share and entry on the register of members the name of the purchaser, and valid surender or forfeiture of the share. The membership of a mutual benefit fund is not terminated by the mere appropriation of the share capitals of a member towards the amount due by him to the fund in the absence of forfeiture [1]. Where persons holding fully paid up shares in a bank surrendered their shares, after the bank had gone into voluntary liquidation, to another company and in lieu thereof received preference shares in the said company which meanwhile, by an arrangement evidenced by an instrument that had not been registered, had taken over the assets of the bank in liquidation, it was *held* that those persons had ceased to be members of the bank and that any meeting convened or proceedings taken by them as shareholders or contributories of the bank were invalid and inoperative [2].

Rights of a member.

The rights of a member are—(1) statutory, (2) given by the memorandum and articles of association and (3) given by the general law, especially that relating to contracts and members of corporations. The statutory right cannot be taken away or modified by any provision in the memorandum or the articles [3].

A member has the right of claiming injunction to restrain the company from acting on an *ultra vires* resolution, even if he has himself been a party to the passing of the resolution and has assented to previous illegal acts done under it [4].

A minority of the members has a right to sue a shareholder for misappropriation of the company's goods, even though the majority approved of his acts [5]. No shareholder has any right to any item of the company's property [6].

As to the position of a person who has been induced to take share by the misrepresentation of the company or its agents, see notes to ss. 93, 97 and 100.

For the right of a bearer of share warrant to be regarded as a member, see ss. 45 and 46.

For cases relating to allotment of shares, see notes to s. 101.

Expulsion of member.

Where a company by resolution expels a member from the membership of the company, and the articles of association do not empower such expulsion so as to deprive the expelled member of his share, the resolution of expulsion has no effect, inasmuch as while the expelled member remained a shareholder, he must also remain a member [7].

Register of members.

31. (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

(*i*) the names and addresses, and the occupations, if any, of the members and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

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[1] Venkatesam v. Rama Rao [1936] M. 97.

[2] Hunter v. Damodar Das [1924] 22 A. L. J. 719.

[3] Peveril Gold Co. [1898] 1 Ch. 122 C.A.

[4] Moseley v. Koffyfontein Mines [1910] 2 Ch. 382.

[5] Vadilal v. Maneklal [1925] B. 188, 49 Bom. 291, 27 Bom. L. R. 48.

[6] Maccaura v. Northern Assurance Co. [1925] A. C. 619, 625.

[7] Madhava v. Canara Banking Corpn. [1941] M. 354, [1941] M. W. N. 28, [1940] 2 M. L. J. 937.

(*ii*) the date at which each person was entered in the register as a member;

(*iii*) the date at which any person ceased to be a member.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

The register of members must be kept at the registered office until the company goes into liquidation [1].

How registers are kept.

The Act does not prescribe any particular systsm of keeping the register, but only requires that it shall contain the particulars mentioned in this section [2]. More than one book may be used [3]. If there is a substantial compliance with the requirements of the Act, the register is not invalidated by reason of a slight deviation from its directions or by unimportant omissions or defects in the particulars of information specified in the section [4]. The company must not enter in the register or share certificate a statement of any lien on the shares [5]. It should not put on the register anything except what is required under the Act [6]. An executor is entitled to be put on the register on proof of his title, and the company is not entitled to qualify the entry by showing that he holds the shares in a representative capacity [6]. A partnership should not be entered in the register in the firm name [7]. Two or more persons getting a transfer in their partnership name are not entitled to be entered on the register in their partnership name, for a firm is not a person [7]. But the word used is "member" and not "person." See *Weikersheim's case* [3].

Where a company has converted any of its shares into stock, the register must show the amount of stock held by each member instead of the amount of shares and the particulars relating thereto (*vide* s. 52).

Joint holders of shares, where the articles so provide, are entitled to have their names entered in the register in whatever order they choose [8].

The register of members is the creditors' guarantee showing them to whom and to what they have to trust and must consequently be properly kept, so that the names appearing there are all the names of the persons really for the time being liable to the creditors [9].

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[1] Kent Coalfields Syndicate [1898] 1 Q.B. 754; *vide* s. 36.

[2] For particulars to be entered where share warrants are issued, see s. 47, and for the bearer's right to be entered on the register, see s. 45. Where capital is converted into stock, see s. 53.

[3] Weikersheim's case (supra) at p. 836. Allotment sheets may under some circumstances be regarded as the register: Ex. p. Cammell [1894] 1 Ch. 528, 2 Ch. 392.

[4] Alliance Financial Corpn. [1866] 3 Bom. H. C. R. 166.

[5] W. Key & Son Ltd. [1902] 1 Ch. 467.

[6] T. H. Saunders & Co. [1908] 1 Ch. 415.

[7] Vagliano Anthracite Collieries [1910] W. N. 187, 103 L. T. 211.

[8] T. H. Saunders & Co. (supra); Burns v. Siemens Bros. [1919] 1 Ch. 225.

[9] Ramesh v. Jogini [1920] 47 Cal. 901 at p. 906.

As the Companies Act becomes applicable the moment a company is registered, it is necessary that until the register of members is written up, the allotment book or the list of applications should be made to serve the purpose of the register, and all the necessary particulars should be shown therein 1.

For a suit against a shareholder to enforce liability in respect of his shares, time runs from the date on which his name is entered on the register of members 2.

Prima facie evidence.

The register of members is *prima facie* evidence of any matter directed or authorized by the Act to be inserted therein 3. S. 33 provides that no notice of any trust express, implied or constructive shall be entered on the register. The register is not couclusive 4.

Rectification of register.

If a person who has agreed to be a member is not put on the register, the Court may rectify the register upon winding up of the company 5. A person whose name has been wrongfully removed from the register remains a member 6, and one who has not agreed to take shares is not a member even if his name is put on the register 7. If he has been induced to take the shares by misrepresentation the register may be amended under s. 38. The applicant in such a case must prove by direct evidence that the statements relied on by him were false 8. He is not entitled to rely on admissions made by the chairman or on the report of an expert employed by the company 9.

If shares are paid in money's worth, the register must show that they are paid up, though no money has actually passed 10. The directors can in certain circumstances, e.g., mutual mistakes, rectify the register without intervention of the Court, if the latter could under such circumstances rectify it 11. Where the directors acknowledge that a shareholder is entitled to rectification of the register, they may consent to this being done without the necessity of an application to the Court 12. For cases relating to rectification of the register see notes to s. 38.

Inspection of register.

The register is open to members *gratis* and to non-members on payment of the prescribed fee, and they may make extracts 13. The motive of the party however in making the extract is immaterial 14. As regards the right of a person, whether member or not, to obtain copies of the register, see s. 36, sub-s (2).

Branch register.

For provisions relating to the keeping of a branch register in the United Kingdom called the British register, see ss. 41 and 42. As to inspection and rectification of the register of members, see ss. 36 and 38 respectively. For a company's power to close the register for not more than forty-five days in a year see s. 37.

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1. Ex. p. Cammell [1894] 2 Ch. 392.
2. Chota Lal v. Dalsukhram [1893] 17 Bom. 472.
3. S. 40.
4. Reese River Silver Mining Co. v. Smith [1870] L. R. 4 H. L. 64, 80; Penhale, Lomax &c. Co. [1867] 2 Ch. App. 398.
5. Arnot's case [1887] 36 Ch. D. 702 at p. 707.
6. Barton v. London & N. W. Rail. Co. [1889] 24 Q. B. D. 77.
7. Ormerod's case [1894] 2 Ch. 474.
8. London Electrobus Co. [1906] W. N. 147, 22 T. L. R. 677.
9. Djambi Rubber Estate [1912] W. N. 192; on appeal 29 T. L. R. 28, 107 L. T. 631.
10. Anglesea Colliery Co. [1866] 1 Ch. App. 555.
11. Smith v. Brown [1896] A. C. 614 P. C.
12. Anderson's case [1869] 8 Eq. 509; compare Indo-China Steam Navigation Co. [1917] 2 Ch. 100.
13. See the amended sub-s. (1) of s. 36.
14. Davies v. Gas Light & Coke Co. [1909] 1 Ch. 248.

As to the entry of stock and share warrants in the register, see ss. 52 and 47 respectively.

Index of members of company.

31-A. (1) *Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall within fourteen days after the date on which any alteration is made in the register of members make any necessary alteration in the index.*

(2) *The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.*

(3) *If default is made in complying with this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.*

This section is new. It has been inserted by the Companies (Amendment) Act of 1936. It reproduces s. 96 of the English Act of 1929. See Introduction.

Annual list of members and summary.

32. (1) Every company having a share capital shall *within eighteen months from its incorporation and thereafter* once at least in every year make a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list shall state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members respectively and the dates of registration of the transfers, and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars :—

(*a*) the amount of the share capital of the company, and the number of the shares into which it is divided ;

(*b*) the number of shares taken from the commencement of the company up to the date of the return ;

(c) the amount called up on each share ;

(*d*) the total amount of calls received ;

(*e*) the total amount of calls unpaid;

(*f*) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount *in respect of any shares or debentures*, since the date of the last return *or so much thereof as has not been written off at the date of the return*;

(*g*) the total number of shares forfeited;

(*h*) the total amount of shares or stock for which share-warrants are outstanding at the date of the return;

(*i*) the total amount of share-warrants issued and surrendered respectively since the date of the last return;

(*k*) the number of shares or amount of stock comprised in each share-warrant;

(*l*) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are *the managers or managing agents of the company, and the changes in the personnel of the directors, managers and managing agents since the last return together with the dates on which they took place*; and

(*m*) the total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act.

(3) The above list and summary shall be contained in a separate part of the register of members, and shall be completed within *twenty-one days* after the day of the first or only ordinary general meeting in the year, and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the secretary of the company, together with a certificate from such director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid.

(4) A private company shall send with the annual return required by sub-section (1) a certificate signed by a director or other officer of the company that the company has not, since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under sub-clause (b) of clause 13 of sub-section (1) of section 2 are not to be included in reckoning the number of fifty.

(5) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding

fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Amendment. By the Companies (Amendment) Act XXII of 1936, the words in italics have been inserted in sub-s. (1). In sub-s. (2) cl. (*f*) for the words "in respect of any debentures", the words "in respect of any shares or debentures" have been substituted, and the last portion (in italics) has been added. In cl. (*l*) for the words "the managers of the company" the words in italics have been substituted. In sub-s. (3) for the words "seven days" the words "twenty-one days" have been substituted. The original cl. (4) has been re-numbered as cl. (5) and a new cl. (4) imposing a new obligation on private companies has been inserted. The new obligation has, it appears, been suggested by the provision in the Sixth Schedule of the English Act of 1929.

Year. Sub-sec. (1). The word "year" means a year reckoned according to the British calendar [1], *i.e.*, from 1st January to 31st December inclusive.

Cash. Sub-sec. (2). The word "cash" means such a transaction as would, in an action at law for calls, support a plea of payment, as Lord Macnaghten observed in *Larocque* v. *Beauchemin* [2]: "If a transaction resulted in this, that there was on the one side a *bona fide* debt payable in money *at once* for the purchase of the property, and on the other side a *bona fide* liability to pay money *at once* on shares, so that if bank notes had been handed from one side of the table to the other in payment of calls, they might legitimately have been handed back in payment for the property; it appears to me that the Act does not make it necessary that the formality should be gone through of money being handed over and taken back again." For other cases see notes to s. 104.

Discount. Shares cannot be issued at a discount [3], even by way of compromise [4], or in any other indirect way [5]. If an arrangement for the issue of shares is such that in the course of its due working out there is as much as a possibility that in the result the shares will have been issued at a discount, then the issue of the shares as fully paid cannot be justified [6].

Lump sum. To insert a lump sum in the summary or balance-sheet for good-will, trade marks, machinery, furniture and fixtures without giving the separate values for each class is not a compliance with the law [7]. Where the company has converted any of its shares into stock, the list must show the amount of stock held by each member instead of the amount of shares and particulars relating thereto (s. 52).

Sub-sec. (3). It is the bounden duty of a company and its directors and managers to forward to the registrar the summary and the list specified in the section [8], and the obligation does not come to an end on the date on which by default the penalty begins

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1. General Clauses Act (X of 1897), s. 3, cl. (59); Gibson v. Barton [1875] 10 Q. B. 329, 32 L. T. 396; Edmonds v. Foster [1875] 33 L. T. 690. See also Park v. Lawton [1911] 1 K. B. 588.
2. [1897] A. C. 358 P. C.
3. Ooregum Gold Mining Co. v. Roper [1892] A. C. 125.
4. Mother Lode Gold Mines v. Hill [1903] 19 T. L. R. 341.
5. Moseley v. Koffyfontein Mines [1904] 2 Ch. 108; Famatina D. Corporation v. Bury [1910] A. C. 439.
6. Trustees' Corpn. v. Commissioners of Income Tax [1930] P. C. 151, 54 Bom. 437, 34 C. W. N. 709, 57 I.A. 152.
7. Galloway v. Schill, Seebohm & Co. [1912] 2 K. B. 354.
8. Debendra v. Registrar [1918] 45 Cal. 490.

to accrue. Therefore all persons, who at any time during the default in complying with the provisions of this section acted as directors or managers, are liable to be convicted; it is immaterial that some or all of them were not legally qualified to act as directors or managers until after the date when the penalty first accrued [1]. The fact that the managing directors and the secretary had resigned their positions before the prosecution for the non-compliance with the provisions of the section was started, does not free them from their liability [2].

Sub-s (5). It is no defence to a charge under this section that there was no general meeting held, the persons charged having been themselves parties to the default in holding the general meeting [3]. But a continuing daily fine may not be imposed where owing to no meeting having been held it is not possible to remedy the default [4]. If default is made in holding the general meeting and in filing the return, penalties are incurred under this section as well as under s. 76 [5]. The word "default" is a word of general import and includes failure or omission [6]. "Default" implies a wilful continued neglect to do an act required to be done [4]. A statutary offence is committed where the transaction is not *malum in se* [6].

In order that a conviction under this section, s. 77 (10) and s. 134 (4) of an officer may be sustained, the only thing the prosecution has to prove is that that particular officer knowingly and wilfully authorized or permitted these defaults. The section speaks also of authorisation of those defaults, but it is not necessary to prove that, as the offence is also complete if the officer knew of the defaults and permitted the defaults [7].

As to the penalty for wilfully making a statement which is false in a material particular, see s. 282.

For the form in which the annual list and summary must be made see From E in the Third Schedule.

As to the right of a person to obtain copies of the list and summary see s. 36, sub-s. (2).

Magistrate's power & jurisdiction.

The forwarding to the registrar of the list and summary, which upon the face of them purport to satisfy the requirements of the Act, is not a sufficient compliance with the section, unless such a list and summary are in accordance with the facts, and the Magistrate has jurisdiction to enquire into the truth or falsehood of the statements contained therein [8]. But questions of nicety as to the title to shares and the right to be on the register cannot properly be determined by the Magistrate, and with reference to such questions he ought to accept the company's register as practically conclusive [9]. A charge under this section cannot be sustained, unless there is evidence that the previous return is correct, because otherwise one must arrive at the conclusion that if there is any mistake in one year it cannot be corrected in the next (see the last case).

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[1] Totaram v. Emperor [1916] 17 Cr. L. J. 242, 34 I. C. 262. See also R. v. Tyler [1891] 2 Q. B. 588. The word "manager" includes a manager *de son tort* : Gibson v. Barton (supra) ; R. v. Lawson [1905] 1 K. B. 541 ; Coventry & Dixon's case [1880] 14 Ch. D. 660 ; Edmonds v. Foster (supra).

[2] Chhabil Das v. Emp. [1914] 15 Cr. L. J. 300, 23 I. C. 508.

[3] Park v. Lawton [1911] 1 K. B. 588. The default must however be found as a fact--see Surendra v. Emp. [1941] 43 C. W. N. 1130; see notes to s. 76 *post*.

[4] Dorté v. South African Superaeration [1904] 20 T. L. R. 425.

[5] Ibid ; Gibson v. Barton [1875] 10 Q. B. 329.

[6] Garrard v. James [1925] Ch. 616 at p. 622.

[7] Ballav Das v. Mohan Lal [1936] C. 237, 39 C. W. N. 251, 162 I. C. 282 ; see also Lakshmana v. Emp. (infra) ; Sundar Das v. Emp. [1929] L. 836, 10 Lah 521.

[8] Briton Medical & General Life Association Co. [1888] 39 Ch. D. 61 ; Lakshmana v. Emp. [1932[M. 497, 35 M. L. W. 66.

[9] Lakshmana v. Emp. (supra).

A Presidency Magistrate has jurisdiction under s. 182, Cr. P. C. to try an offence under the section, and even if he has not, s. 531 Cr. P. C. cures the defect [1].

Trusts not to be entered on register.

33. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar.

Object of the section.

The object of the section is (1) to relieve the company from taking notice of equitable interests in shares and (2) to preclude persons claiming under equitable titles from converting the company into a trustee for them [2].

Company recognizes no trust—equitable rights.

Although a member is merely a trustee to the knowledge of the company, he is liable for calls and other obligations of his membership. The lien of the company will prevail over the title of the *cestui que trust* [3]. But a company, which in the face of notice that the shareholder is not the beneficial owner of the shares, makes advances or gives credit to the shareholder, is not protected by the section or by the provisions to that effect in the articles of association, and the company cannot in such circumstances assert against the beneficiaries a lien on the shares for the indebtedness of the member [4]. The company is not relieved from the obligation of giving effect to equitable rights of which it actually has notice, and its own lien will not take precedence of charges prior in date of which it has notice at the time of making the advance [5]. But a company is not concerned to enquire whether trustees who are registered as shareholders are acting within their powers in dealing with the shares [6], and can enforce its own rights against the persons in whose names the shares stand [7]. A company lending money on the security of its shares will however be bound by constructive notice [8].

Though a company is not bound to recognize a trust in respect of its shares, yet that would not prevent a Court from recognizing such a trust in a suit in which evidence of that trust is forthcoming and from considering the rights between the parties [9].

Priorty of mortgages.

As a result of this section, where there are several mortgages, the mortgagee first in date has priority, not the person who first gives notice to the company [10]. Lord Esher, M. R. said : "The law has given the company the right to say 'we do not care whether you are a *cestui que trust* or not ; if you are, we have a right to take no notice of you,' " [11]. See notes to s. 28.

But, as observed by Stirling, L. J., "where the company in which the shares are held sees fit to deal with the shares for its own benefit, then that company is liable to be affected with notice of the interest of a third party" [12].

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[1] Debendra v. Registrar (supra).
[2] Buckley, 10th ed. p. 75 ; see In re Perkins [1890] 24 Q. B. D. 613.
[3] New London & Brazilian Bank v. Brocklebank [1882] 21 Ch. D. 302.
[4] Mackereth v. Wigan Coal & Iron Co. [1916] 2 Ch. 293.
[5] Bradford Banking Co. v. Henry Briggs, Son & Co. [1886] 12 App. Cas. 29 ; Hopkinson v. Rolt [1861] 9 H. L. C. 514.
[6] Simpson v. Molson's Bank [1895] A. C. 270.
[7] New London & Brazilian Bank v. Brocklebank (supra) ; Simpson v. Molson's Bank (supra) ; Rearden v. Provincial Bank [1896] 1 I. R. 532 C. A.
[8] Longman v. Bath Electric Tramways [1905] 1 Ch. 646 ; Mackereth v. Wigan Coal & Iron Co. (supra).
[9] Dharwar Bank v Mahomed Hayat [1931] B. 269, 33 Bom. L. R. 250, 133 I. C. 241 ; Mackereth v. Wigan Coal & Iron Co. (supra).
[10] Société Generale v. Walker [1885] 11 App. Cas. 20.
[11] Re Perkins [1890] 24 Q. B. D. 613.
[12] Rainford v. James Keith & Blackman Co. [1905] 2 Ch. 147, 161.

As between the trustee and the *cestui que trust*, the latter is the shareholder and is bound to indemnify the trustee against all liabilities attached to the shares[1]. Although a company cannot put the *cestui que trust* on the list of contributories, it may be entitled to enforce the trustee's right to indemnity[2].

Trustee and *cestui que trust*.

The particulars of lien also may not be entered in the register[3].

Transfer of shares.

34. *(1) An application for the registration of the transfer of shares in a company may be made either by the transferor or the transferee, provided that where such application is made by the transferor no registration shall in the case of partly paid shares be effected unless the company gives notice of the application to the transferee and subject to the provisions of [sub-section (7)] the company shall, unless objection is made by the transferee within two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.*

(2) For the purposes of sub-section (1) notice to the transferee shall be deemed to have been duly given if despatched by prepaid post to the transferee at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post.

(3) It shall not be lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip :

Proviaed that, where it is proved to the satisfaction of the directors of the company that an instrument of transfer signed by the transferor and transferee has been lost, the company may, if the directors think fit, on an application in writing made by the transferee and bearing the stamp required by an instrument of transfer, register the transfer on such terms as to indemnity as the directors may think fit.

(4) If a company refuses to register the transfer of any shares or debentures, the company shall, within two months from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the refusal.

(5) If default is made in complying with sub-section (4) of this section, the company and every director, manager, secretary or other

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[1] Butler v. Cumpston [1868] 7 Eq. 16; James v. May & West London &c. Co. [1873] L. R. 6 H. L. 328; Hemming v. Maddick [1872] 7 Ch. App. 395; Hughes-Hallet v. Indian Mammoth Mining Co. [1883] 22 Ch. D. 561; Whittaker v. Kershaw [1890] 45 Ch. D. 320; Hardoon v. Belilios [1901] A. C. 118, 124; but see Wise v. Perpetual Trustee Co. [1903] A. C. 139.

[2] British Nation L. A. Assn. [1878] 8 Ch. D. 679 at p. 708; National Financial Co. [1868] 3 Ch. App. 791.

[3] W. Key & Son [1902] 1 Ch. 467.

officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(6) Nothing in sub-section (3) shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(7) Nothing in this section shall prejudice any power of the company under its articles to refuse to register the transfer of any shares.

This section has been substituted by the Companies (Amendment) Act, 1936 for the original s. 34 which ran thus :

Registration of transfer at request of transferor.

34. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

In sub-s. (1) the expression "sub-section 7" has been substituted for the expression "sub-section (4)" by the Companies (Amendment) Act II of 1938.

Object of section.

The Act did not lay down the procedure for the transfer of shares and this was generally provided for in the articles of a company. Undue restrictions upon transfers and undue delay in registering transfers were not uncommon. This section, while leaving a discretion with the directors to refuse transfers, requires, for a transfer application either by the transferor or the transferee, notice to the transferee in the case of an application by the transferor, the use of the proper instrument of transfer required by the company, and notice by the company to the transferee and the transferor in case of refusal of registration. It also prescribes a penalty for default in complying with the terms of sub-s. (4). See Introduction.

Protection of transferor.

If the transferee does not apply to have the transfer registered, the transferor can, or he can make an application to the Court for rectification of the register of members [1]. This section is intended for the protection of the transferor if the transferee fail to perform his duty of getting the transfer registered [2]. But it is the duty of the transferor to see that all formalities necessary to complete the transfer are performed. If however the directors fail in their duty to see them performed, they cannot after a lapse of time hold the transferor liable [3].

Sub-s. (3). An arricle conferring upon the directors power to transfer shares inspite of the absence of an instrument of transfer is *ultra vires* of this section [4].

Sub-s. (7). Where the directors in refusing to register a transfer of shares reasonably and *bona fide* exercise their powers under the relevant articles, the refusal is valid [5].

As to transfer of shares generally, see notes to s. 28 and reg. 18, Table A.

As to the liability of a past member in the winding up, see s. 156.

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[1] Stranton Iron & Steel Co. [1873] 16 Eq. 559.

[2] Skinner v. City of London Corpn. [1885] 14 Q. B. D. 882.

[3] Murray v. Bush [1873] L. R. 6 H. L. 37.

[4] Madhava v. Canara Banking Corpn. [1941] M. 354, [1940] 2 M. L. J. 937, [1941] M. W. N. 28.

[5] Berry v. Tottenham &c. Athletic Co. [1936] 53 T. L. R. 100.

Transfer by legal representative.

35. A transfer of the share or other interest of a deceased member of a company made by his legal represetative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Rights of executors and legal representatives.

A deceased member remains a member so long as his name remains on the register without notice to the company of his death [1]. The executor or adminstrator of a deceased member does not become a member, unless he consents to be treated as such and to be entered on the register of members [2]. The executor however can insist on being entered as a member in his own right, without any reference to his representative capacity [3], unless the articles of association contain some authority to do so [3]. The company must enter the names of the executors on the register in the order desired by the latter [3].

The legal representatives of a deceased or bankrupt member are entitled to receive on behalf of the estate any dividends, bonuses or benefits attaching to the shares and are liable to be put on the list of contributories in their representative capacity [4]; but they are not members unless they have become so by formal registration [5]. Until they do this, they are not entitled to receive notices from the company [6].

The legal representatives of a deceased member can transfer the shares before getting themselves registered as members [7]. Before registration they are liable for calls only in their representative capacity, but after registration they become personally liable [8]. A company cannot reject the executor's claim to the shares relying upon its articles which enable it to refuse transfers [9]. Articles forbidding executors to exercise the rights of a member until they have been registered have been held to refer to the exercise of rights on their own behalf and not on behalf of the testator's estate [10]. As regards the executor's right to transfer the shares of the testator, reg. 22 of Table A gives the directors the same right to decline or suspend registration as they would have had in the case of a transfer by the deceased member before his death. But to exercise this right there must be a valid resolution of the board [11]. See notes to reg. 22, Table A.

On the death of a holder of partly paid shares, the company cannot intervene to prevent distribution of the estate, unless a call has actually been made [12].

Lunatic's shares.

Shares or stock registered in the name of a lunatic can only be transferred, under an order made in lunacy, by the person named in the order [13]. A trustee in bankruptcy may disclaim the bankrupt's interest in unsaleable or or not readily saleable encumbered shares [14].

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[1] Per Davey L. J. in New Zealand &c. Co. v. Peacock [1894] 1 Q. B. 622.

[2] Bowling & Welby's Contract [1895] 1 Ch. 663 at p. 670.

[3] T. H. Saunders & Co. [1908] 1 Ch. 415.

[4] Vide ss. 160 and 161.

[5] James v. Buena Ventura &c. Syndicate [1896] 1 Ch. 456.

[6] Allen v. Gold Reefs of West Africa [1900] 1 Ch. 656.

[7] Simpson v. Molson's Bank [1895] A. C. 270.

[8] Duff's Executor's case [1886] 32 Ch. D. 301 C. A; Buchan's case [1879] 4 App. Cas. 547, 549; James v. Buena Ventura &c. Syndicate (supra).

[9] Bentham Mills Spinning Co. [1879] 11 Ch. D. 900.

[10] Llewellyn v. Kasintoe Rubber Estates [1914] 2 Ch. 670.

[11] Hackney Pavilion [1924] 1 Ch. 276.

[12] Re King, Mellor v. South Australian Land &c. Co. [1907] 1 Ch. 72.

[13] New York Security Trust Co. v. Keyser [1901] 1 Ch. 666.

[14] Wise v. Lansdell [1921] 1 Ch. 420.

Notice in case of death of a member.

A notice served at the registered address of a deceased member is valid, if the company has no notice of his death 1. If the company is aware of the death, the notice should be served on the legal representative. It will be valid if the notice comes to the knowledge of the executors 2. Probate is not notice to the company of the contents of the will of the deceased member 3.

Rights of the estate of deceased member to new shares.

If the articles require that upon creation of new shares they should first be offered to the members, the estate of a deceased member must have the benefit 4. The executor, though he has not registered himself as a member, can give notice in case of a reconstruction under s. 213 (now s. 208-C) and has the same right to dissent from a reconstruction scheme 5.

"Personal representative."

The expression "personal representative" means the duly constituted representative according to the law of the country in which the company is registered 6. A transfer executed by one of two executors, not registered as holders of the shares, may be a valid transfer 7 ; but where the names of the executors are placed on the register, they become joint shareholders in their individual capacity, although they may be described as executors in the register, and consequently the shares can only be transferred by means of transfer executed by all of them 7.

See notes to regs. 21 and 22 of Table A and to s. 160.

Inspection of register of members.

36. (1) The register of members, commencing from the date of the registration of the company *and the index of members*, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions, as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe, for each inspection. *Any such member or other person may make extracts therefrom.*

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of six annas for every hundred words or fractional part thereof required to be copied *and the company shall cause any copy so required by any person to be sent to that person within a period of ten days, exclusive of non-working days and days on which the trans-*

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1. New Zealand Gold Co. v. Peacock (supra) ; Tricumdas Mills Co. v. Haji Saboo [1902] 4 Bom. L. R. 215.
2. James v. Buena Ventura &c. Syndicate (supra) at p. 467 : Allen v. Gold Reefs (supra) at p. 670.
3. Grundy v. Briggs [1910] 1 Ch. 444.
4. James v. Buena Ventura &c. Syndicate (supra) ; Allen v. Gold Reefs (supra).
5. See Llewellyn v. Kasintoe Rubber Estates (supra).
6. New York Breweries v. A. G. [1899] A. C. 62, 70, 71.
7. Barton v. North Staff. Ry. Co. [1888] 38 Ch. D. 438.

fer books of the company are closed, commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal or default continues and the Court may by an order compel an immediate inspection of the register and index or direct that copies required shall be sent to the persons requiring them.

Amendment. In Sub-s. (1) the words in italics have been inserted by the Companies (Amendment) Act, 1936 which has also added the words in italics to sub-s. (2). The new sub-s. (3) has been substituted for the original one. These amendments closely follow the provisions of s. 98 of the English Companies Act of 1929 (printed in the Appendix). For the effect of these alterations see Introduction. The original sub-s. (3) of s. 36 ran thus :

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall be liable to the like penalty, and the Court may by order compel an immediate inspection of the register.

Inspection of register of members. Where a person, entitled to obtain inspection of the register, applies for inspection during business hours and not at a time prohibited under the next following section, such inspection must be granted [1], and even a temporary refusal, based upon grounds of convenience to the company's business, will render a director liable to the penalty [2]. A member was not entitled to take extracts or make copies himself [3].

Object is immaterial. Object of inspecting the register is immaterial; for even if it be known that the object is antagonistic to the company, it is illegal to refuse inspection or copy [4].

Right to inspect. The right to inspect ceases upon the commencement of winding up [5], and if inspection is required after that, an order of the Court must be obtained under s. 241. Such an order entitles the party to inspect and take copies himself [6]. He need not pay the liquidator a fee for having the copies made [7]. The result of authorities as to the nature and extent of the common law right which any member of a corporation has to inspect the documents of the corporation is that the privilege of inspection is confined to cases where the member has in view some definite right or object of his own and to those documents which would tend to illustrate such right or object [1].

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[1] Bevan v. Webb [1901] 2 Ch. 59.

[2] Queen Empress v. Beer [1898] 20 All. 126.

[3] Balaghat Gold Mining Co. [1901] 2 K. B. 665; but see Mutter v. Eastern Midland Ry. Co. (infra) and Neslon v. Anglo-American Land &c. Agency [1897] 1 Ch. 130. This has been remedied now [see sub-s. (1)].

[4] Davies v. Gas Light & Coke Co. [1909] 1 Ch. 248, on appeal 708 C.A.; Mutter v. Eastern Midland Railway [1888] 38 Ch. D. 92; R. v. Wilts Navigation [1873] 29 L. T. 922; Holland v. Dickson [1888] 37 Ch. D. 669.

[5] Kent Coalfields Syndicate [1898] 1 Q. B. 754 C. A.

[6] Nelson v. Anglo-American Land &c. Co. [1897] 1 Ch. 130.

[7] Re Atauco Co. [1899] W. N. 134.

It would be a breach of duty on the part of the directors to allow the register of members to be removed from the registered office of the company, and a solicitor cannot have a lien on it even if the company in general meeting pass such a resolution, because there are other persons, e. g., creditors who have a right to inspect it [2].

Removal from registered office.

Custody.

The liquidator and not the receiver for debenture-holders should have the custody of the register upon a winding up [3].

Power to close register.

37. A company may, on giving *seven days' previous* notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole *forty-five* days in each year *but not exceeding thirty days at a time.*

Amendment.

By the Companies (Amendment) Act, 1936 the words "seven days' previous" have been inserted, the words "forty-five" have been substituted for the word "thirty" and the last portion in italics has been added. See Introduction.

Advertisement.

Where a company keeps a British register as well under s. 41, the advertisement must be in some newspaper circulating in the locality wherein the British register is kept [4].

Power of Court to rectify register.

38. (1) If—

(*a*) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members of a company; or

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and

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[1] Bank of Bombay v. Suleman Somji [1908] 32 Bom. 466 P.C.
[2] Capital Fire Insurance Association [1883] 24 Ch. D. 408 at p. 414.
[3] Engel v. South Metropolitan Brewery Co. [1892] 1 Ch. 442.
[4] S. 42, sub-sec. (2).

generally may decide any question necessary or expedient to be decided for rectification of the register:

Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure, 1908, on the grounds mentioned in section 100 of that Code.

"Sufficient cause."

Sub.s. (1) (a). In any case in which the company and its directors literally and *bona fide* carry out the provisions of the company's articles, it or they cannot be said to be acting without "sufficient cause." It is a misreading of those words in this section to suppose that they confer upon the Court jurisdiction to make a roving enquiry as to whether what has happened is desirable or even reasonable 1.

Where register may be rectified.

The power to rectify the register has been exercised by the Court in the following circumstances: Where there has been misrepresentation in the prospectus; where it is expedient to pass an order which will bind all the shareholders and effectually bar any subsequent application for restoration of a name struck out by the directors; where shares have been improperly issued at a discount; where the application for shares has been made in the name of a person without his authority; where there is no valid allotment of shares; where allotment is not made within a reasonable time; where the allotment is irregular; where transfer of shares has been improperly registered or registration of transfer has been refused; where the company puts in the register matters which are not required by the statute; and in order to set right allotment of shares which have been issued as fully paid up without a proper contract being filed 2.

The Court has ordered rectification of the register, where the allotment was irregular 3, where the company wrongfully refused to register a transfer 4, where the company acted on a forged transfer 5, where the transfer was a colourable transaction 6, where shares have been transferred to avoid liability 7, where a person has been induced to take shares by fraud or misrepresentation 8, and where shares have been improperly surrendered 9. The name of any person improperly entered or omitted must be considered to be entered or omitted without "sufficient cause" 7.

A person gave his bankers a continuing guarantee and deposited with them certificates of shares of a certain company with a memorandum charging the shares as security for payment *on demand* of all moneys due or to become due to them and upon default by him in paying or further securing on demand any money secured, authorising them without further notice to sell the shares. Upon sale by the bankers of the shares the shareholder brought an action for rectification of the register: the House of Lords *held* that the shareholder was entitled to have the register rectified by restoring his name thereto, on the ground that there was no effective demand for payment before

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1. Kasiviswanathan v. Indo-Burma Petroleum Co. [1936] R. 52, 162 I. C. 127.
2. Hals. pp. 154 & 155 and cases cited there.
3. Portuguese Consolidated Copper Mines [1889] 42 Ch. D. 160.
4. Stranton Iron & Steel Co. [1873] 16 Eq. 559.
5. Bahia & Sanfrancisco Ry. Co. [1868] L. R. 3 Q. B. 584.
6. Discoverers' Finance Corporation [1908] 1 Ch. 141.
7. Ex p. Kintrea [1869] 5 Ch. App. 95.
8. Rees River Silver Mining Co. [1867] 2 Ch. App. 604.
9. Bellerby v. Rowland &c. Co. [1902] 2 Ch. 14.

the attempted sale of the shares, the demand which was made having been superseded by the security and the mortgage subsequently given and executed [1].

Where not.

Alteration of the register will not however be made where the transfer is not registered owing to a decision of the directors *bona fide* come to and within their powers that the transfer ought not to be registered [2], or if something remains to be done to complete the transfer [3], or if the articles require the directors to exercise their discretion and they have not yet done so [4].

Court's power.

On an application for rectification on the ground of misrepresentation in the prospectus by the omission to disclose certain facts, it is not enough for the applicant to show mere non-disclosure of the facts; he must show that if the facts had been disclosed it would falsify some statement in the prospectus [5]. If the time between discovery of the true state of things and repudiation be too long, the Court will not grant the application for rectification [5]. But mere delay in applying is itself not a ground for refusal to order the register to be rectified [6]. In order to give jurisdiction to the Court, it is not necessary that there should be actual default in the company [7]. The jurisdiction is general and not confined to cases where there has been error, mistake or default on the part of the company [8].

Before and after winding up.

Power is discretionary.

The Court has power to rectify the register after [9], as well as before, a winding up order has been passed [10]. In a proper case it may make the date of registration retrospective [10]. But after the winding up order, it is too late to rescind a contract for taking shares on the ground of fraud, unless the contract is void *ab initio* [11]. The power is however entirely discretionary, and the Court will not exercise it where the only object of the applicant is to save the expenses of taking letters of administration and of a legal transfer of the shares in the applicant's name. [12]. It is a matter of discretion whether the Court will exercise the summary jurisdiction, and in a complicated or doubtful case the jurisdiction ought not to be exercised; but where the legal title in the applicant is clear, the order ought to be made [13]. Although persons are not entitled to an order *ex debito justitiæ*, the jurisdiction under this section is unlimited, with a discretion in the Court in the circumstances of each case: "In a simple case where an immediate rectification is essential, it may be desirable to apply under this section; but if the case is complicated, an action should be brought" [14]. Where a holder of shares applies to have his name removed from the register, a mortgagee of the uncalled share capital being vitally interested in the proceedings is entitled to oppose the application 1. In exercising the discretion regard must be had to the justice of the case 2.

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[1] Hunter v. Hunter [1936] A. C. 222.

[2] Alexander Mitchell's case [1879] 4 App. Cas. 548; Mitchell v. City of Glasgow Bank [1879] 4 App. Cas. 624.

[3] Marino's case [1867] 2 Ch. App. 596.

[4] Walker's case [1866] 2 Eq. 554; Hackney Pavilion [1924] 1 Ch. 276.

[5] Christineville Rubber Estate [1911] W. N. 216, 106 L. T. 260.

[6] Mahadevi v. Motiram [1939] Pat. 603, 20 P. L. T. 703.

[7] Ex. p. Shaw [1877] 2 Q. B. D. 463; but see Ward & Henry's case [1867] 2 Ch. App. 431 (judgment of Lord Cairns).

[8] See the judgment of Turner L. J. in Ward & Henry's case (supra).

[9] S. 184; *ex p.* Ward [1867] 16 L. T. 148.

[10] Sussex Brick Co. [1904] 1 Ch. 598.

[11] Alabaster's case [1869] 7 Eq. 273.

[12] Ariff v. Suratee Bara Bazar Co. [1920] 55 I. C. 751, 12 Bur. L. T. 194.

[13] Ex p. Shaw (supra).

[14] Per Mookerje J. in Ramesh v. Jogini [1920] 47 Cal. 901, followed in Mohideen v. Tinnevelly Mills Co. [1928] M. 571, 28 M. L. W. 932, 111 I. C. 225.

The Court is not bound to dismiss an application under this section as premature on the ground that there has been no refusal to register by a properly constituted board of directors, and it may treat the defence set up as such refusal and deal with the application on the merits 3. An application for registration of transfer will be refused unless it is shown that the directors had acted capriciously and not honestly 4.

Directors' discretion.

Where the articles give a discretionary power to the directors to refuse registration of a transfer and it appears that they have *bona fide* considered the matter, the Court will not compel them to disclose their reasons 5; but when the reasons are disclosed or evidence is produced as to the reasons, the Court can and would consider them 6. Reasons for refusing to register transfers should not be arbitrary, capricious and wanton 7. Where the directors refuse registraiton of transfers without assigning any reason, the Court has jurisdiction, even without reference to the directors or the company, to determine whether the transferee had a right under the articles to have his name registered 8. The powers given by the articles to the directors to refuse registration of a transfer are to be exercised in the interests of the company, and the Court will order rectification where the directors refuse rectification on the mere ground that the transferor has informed them that the transfer was effected by misrepresentation 9.

A power for directors to refuse to register transfers if "in their opinion it is contrary to the interests of the company that the proposed transferee should be a member thereof" only justifies a refusal to register upon grounds personal to the proposed transferee 10. It does not justify refusal to register transfers of shares in small numbers, because the directors do not think it desirable to increase the number of shareholders, or because they think that the transfer is not *bona fide* but that the tranferee is mere nominee of the transferor and the transfer is made to increase the number of shareholders who will support him in a policy which the directors disapprove 10. Of course the directors are entitled to disapprove of a transferee, because they are apprehensive that his position as a shareholder may enable him to acquire, and to pass on to others, information the divulgence of which might be contrary to the interests of the company. But where the directors make up their minds without considering the personality of the transferee, it cannot be said that there has been a proper exercise of their discretion. In such cases the register would be rectified by registering the name of the transferee 10.

The directors can rectify the register where the Court would under similar circumstances order rectification 11. Where the directors acknowledge that a shareholder is

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1. Ramesh v, Jogini (supra).
2. Trevor v. Whitworth [1888] 12 App. Cas. 409 at p. 440 (per Lord Macnaghten); Luchmee Chand v. Bengal Coal Co. [1882] 8 Cal. 317.
3. Muir Mills Co. v. Condon [1900] 22 All. 410.
4. Sree Mahant Kishora v. Coimbatore S. & W. Co. [1903] 26 Mad. 79; *see also* Ex p. Penney [1873] 8 Ch. App. 446 and Coalport China Co. [1895] 2 Ch. 404.
5. Muir Mills v. Condon (supra).
6. Ibid & Matheson v. Nath Singh Oil Co. [1913] 18 I. C. 481.
7. Matheson v. Nath Singh Oil Co. [1913] 18 I. C. 481.
8. Rajnagar Spinning &c. Co. v. Manilal [1912] 14 Bom. L. R. 919.
9. Yodh Raj v. Lakshmi Insurance Co. [1935] L. 123, 152 I. C. 1005.
10. Bede Steam Shipping Co. [1917] 1 Ch. 123.
11. Harley's case [1875] 10 Ch. App. 157; Smith v. Brown [1896] A. C. 614 P. C.

Directors power of rectification.

entitled to rectification, they do this without the necessity of an application to the Court 1, for the company is not bound to fight every claim 2. Cancellation of shares by directors, where the shareholder has valid grounds for cancellation, is good and effectual, although the shareholder claimed such cancellation on invalid grounds, not being at the time aware of the existence of valid grounds 3. If an officer of a company, under a mistake, strikes out the name of the member properly registered, this is a nullity and must be disregarded. The Court will order rectification of the register so as to "restore and retain" the name of the shareholder 4.

Rules and formalities.

Where a company refuses to register a transferee on account of his failure to comply with certain prescribed rules and formalities, the latter may apply for rectification. Such rules and formalities are matters which the company may or may not insist upon and it has always the right to accept such evidence as satisfies its mind that the applicant has a right to be registered 5. When the transferee has complied with what is required of him, he is entitled to assume that the company has acted in accordance with its internal regulations so far as the sanctioning of the transfer is concerned (see note 7 of last page). But refusal by an officer who had no authority by the articles to refuse registration is no refusal by the company 6.

Estoppel of company.

Where a company refuses registration of a transfer alleging that it has a lien on the shares, it is estopped if it had once recognized a previous transfer (see note 7 of last page).

Where winding up intervenes.

Where a shareholder having sold his shares applies to the company for registration of the transfer, but before registration the company goes into liquidation, the shareholder is entitled to have the transferee's name entered in his place as contributory, if he shows sufficient cause, or default or unnecessary delay on the part of the company in entering that fact on the register 7.

If the contract under which the shares have been taken is void and not merely voidable, the name against which the shares stand may be removed even after winding up has commenced 8. But where the removal of a member's name was in consequence of an invalid surrender, it was replaced even after a lapse of seven years 9.

Sub-s. (1). The striking out or expunging a member's name from the register is an omission of his name within the meaning of cl. (a) of this sub-section. In such a case rectification of the register of members will be directed 10. In order to succeed in an application for removal of his name from the register, the applicant must show that it was entered there without sufficient cause 11.

Fraud or misrepresentation.

A member can get his name removed from the register on the ground that he was induceed to take the shares by fraud or misrepresentation in the prospectus 12, provided that the application is made within a reasonable time and before winding up has commenced 13, and proper material has been

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1. First National Re-insurance Co. v. Greenfield [1921] 2 K B. 260 at p. 280.
2. Rajnagar Spinning &c. Co. v. Manilal [1912] 14 Bom. L. R. 919.
3. Reese River Silver Mining Co. (supra).
4. Indo-China Steam Navigation Co. [1917] 2 Ch. 100.
5. Union Indian Sugar Mills Co. v. Jai Deo [1922] 44 All 151.
6. Bahadur v. Shiam [1914] 36 All. 365.
7. Indian Specie Bank [1915] 17 Bom. L. R. 342.
8. Alabaster's case (supra).
9. Bellerby v. Rowland &c. Co. [1902] 2 Ch. 14.
10. Madhava v. Canara Banking Corpn. [1941] M. 354, [1940] 2 M. L. J. 937, [1941] M. W. N. 28.
11. Per Younger, L. J. in Pole's case [1920] 2 Ch. 341.
12. London & Staffordshire &c. Co. [1883] 24 Ch. D. 149.
13. Muir v. City of Glasgow Bank [1879] 4 App. Cas. 337 ; Tennent v. Glasgow Bank [1879] 4 App. Cas. 615.

placed before the Court[1]. Where a shareholder does not take action for a long time, e.g., seven years, to have his name expunged from the register of members, his right to do so would be barred[2]. In the case of *Scottish Petroleum* Co.[3] Lord Justice Baggallay said: "The delay of a fortnight in repudiating the shares makes it to my mind doubtful whether the repudiation in the case of a going concern would have been in time. No doubt where investigation is necessary some time must be allowed as in *Central Railway* Co. *of Venezuela* v. *Kish*[4]. But where, as in the present case, the shareholder is at once fully informed of the circumstances he ought to lose no time in repudiating." If knowing that his name is included in the register of members he stands by, he loses his right to have his name removed. It makes no difference in principle whether he applies for the shares or he is included as a transferee, if he has assented to his name being included amongst the shareholders[5].

Necessary parties.

In an application under this section the company, and not the directors, is the necessary party even if they have exceeded their powers in refusing to register a transfer[6]. The power given to the Court by this section is discretionary, and the Court will not order a transfer to be registered where the alleged transferor is not before the Court, and there is any real doubt as to the validity or *bona fides* of the transaction[7].

When Court will exercise jurisdicdiction.

The Court will interfere and rectify the register upon a motion under this section, where the error is due to the neglect or default of the company, and generally where the question arises between the company and a member or an alleged member as to whether his name has been properly included or excluded[8]. But where a third party is affected, the Court will not exercise its jurisdiction under this section. The applicant in such a case must bring an action to which the third person may be made a party[9].

Rectification: how effected.

Where the Court orders the register to be rectified by removing a name from it, the name should not be erased; it should be penned through and an abstract of the order signed by the secretary should be added[10]. An order to put the transferee's name on the register is necessarily an order to take the transferor's name off[11]. An order for rectification cannot be made in an action to which the transferor is not a party[11].

Damages.

A company is liable to pay damages to a person for any loss he may have sustained by its neglect or refusal to do its duty in respect of the entries in the register of members[12]. But if the order for rectification is refused, the Court cannot give damages upon a motion under this section, the proper course being for the aggrieved person to bring an action[13].

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[1] Sadiq v. Mumtaz Bank [1929] L. 656, 123 I. C. 92.
[2] Peoples Bank of N. India [1936] L. 700.
[3] [1883] 23 Ch. D. 413 (434),
[4] [1867] L. R. 2 H. L. 99.
[5] In re D' Cruz [1939] M. 803.
[6] Keith, Prouse & Co. [1918] 1 Ch. 487; unless the directors are joined at their own request, the Court has no jurisdiction to make a punitive order against them for payment of the costs of the motion.
[7] Luchmee Chand v. Bengal Coal Co. [1882] 8 Cal. 317.
[8] Reese River Silver Mining Co. v. Smith [1869] 4 H. L. 64.
[9] Greater Britain Re-insurance Co. [1920] 124 L. T. 194.
[10] Iron Shipbuilding Co. [1865] 34 Beav. 597.
[11] Ontario Jockey Club v. Mc Bridge [1927] A. C. 916 P. C.
[12] Tomkinson v. Balkis Consolidated Co. [1891] 2 Q. B. 614; Ottos Kopje Diamond Mines [1893] 1 Ch. 618.
[13] Ottos Kopje &c. (supra).

Where a person is suing for rescission, the Court can on terms, *e.g.*, upon giving the usual undertaking to pay damages and paying into Court the amount of the call with interest, restrain the company from forfeiting the shares pending the hearing of the case 1 ; but this is not necessarily a condition precedent to the granting of an injunction.

In an action for damages against a company on the ground of some alleged breach of duty in removing the plaintiff's name from the register, the person whose name has been substituted need not, and indeed ought not, to be joined as a defendant, the claim being not for rectification of the register 2.

Date of taking effect.

In ordering rectification of the register under this section, whether the company is in liquidation or not, the Court has power in a proper case to fix a particular date at which the registration shall be operative, even to the extent of making it retrospective but subject, if necessary, to conditions protecting the rights of third persons 3.

Estoppel of allottee.

Once the shares have been registered in the name of the allottee and he has done acts only consistent with his being a member, he will be taken to have agreed to take the shares and will be estopped from denying that he has so agreed, for the law recognizes that observance of formalities may be dispensed with and irregular, as distingushed from void, transaction may be confirmed 4. But even where the agreement is void, if the applicant's name is put on the register and he with full knowledge of all the facts does acts that are only consistent with his being a shareholder, he will be bound as such. In such a case the placing of the applicant's name on the register would seem to amount to an offer and the acts done to be an acceptance of the offer. The position of a person who agreed to take shares upon special conditions depends upon determination of the question whether the conditions are conditions precedent or conditions subsequent. In the latter case, or where the conditions precedent have been waived, the applicant becomes a shareholder 4. If the allottee transfers his shares, attends meetings or accepts dividends, he will be bound by his acts and cannot rely upon non-performance of the condition precedent 5.

Section is not exhausive.

The section is not exhaustive and does not negative all alteration of the register except those referred to in the section. Where shares stand in the names of two trustees jointly, they are entitled to have their names in different orders and the register may be altered accordingly 6.

Suit for declaration.

Where in a suit for declaration to the effect that the plaintiffs were not shareholders and directors of a company, it appeared that the plaintiffs substantially asked for all the reliefs to which they were entitled, it was held that as no money had been paid by the plaintiffs, a prayer to the effect that the register of members might be rectified by the removal of the plaintiff's name therefrom, would merely be a prayer for nominal relief and hence the objection to the maintainability of the suit in a declaratory form was without any substance 7.

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1. Lamb v. Sambas Rubber &c. Co. [1908] 1 Ch. 845 ; Jones v. Pacaya Rubber Co. [1911] 1 K. B. 455.
2. Lovibond v. Grand Trunk Ry. Co. [1936] 163 I. C. 547 (P. C.).
3. Sussex Brick Co. [1904] 1 Ch. 598.
4. Piara Singh v. Peshawar Bank [1915] 28 I. C. 53.
5. Piara Singh v. Peshawar Bank [1915] 28 I. C. 53.
6. Burns v. Siemen Bros. Dynamo Works [1919] 1 Ch. 225, [1918] 2 Ch. 324.
7. Mutual Bank of India v. Sohan Singh [1936] L. 790, 161 I. C. 952 ; but see Jogesh v. Durga Mohan [1932] C. 714, 36 C. W. N. 638, 140 I. C. 76.

Proviso. The proviso to the section is not in the English Act. The proviso should not be confined to the last clause, but must be read as a general reservation imposed on all the clauses 1. Having regard to the fact that under the proviso an appeal is allowed from the decision of an issue directed to be tried, it is necessary that there should be a clear direction as to the trial of an issue, so that there may be no obscurity on the point and no room for the argument that there was no issue directed to be tried and consequently no right of appeal 1. Under s. 58 of Act VI of 1882, which corresponds to this section, it was held that there was no reason for confining the last sentence, *viz.*, "and an appeal in the manner directed by the Code of Civil Proeedure shall lie," to the case in which an issue has been directed upon a question of title 2. But in view of the altered language of the present section *Amrita* v. *Shrish* 2 is, it is submitted, no longer an authority for the proposition that an appeal lies although no issue has been directed upon a question of title.

Serious questions of title. In proceedings under the section the Court is not bound to decide serious questions of title; but where it elects to decide the question, it may either decide it itself, or send it to somebody else in the form of an issue, but the decision of the issue in either case is the decision of the Court and is appealable 3. The jurisdiction of the civil Court to decide the question falling within the purview of this section is not excluded 4. For further cases see notes to s. 28.

This section in India gives a wide discretion in the matter of costs 5.

An application under this section in which the company is respondent is a proceeding against the company within s. 171 and requires leave of the Court; but with leave the section will apply against the company after winding up 6.

For the question of rectification after winding up see notes to s. 184.

Notice to registrar of rectification of register. 39. In the case of a company required by this Act to file a list of its members with the registrar, the Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be filed with the registrar *within a fortnight from the date of the completion of the order.*

The words in italics have been added by the Companies (Amendment) Act, 1936. Companies referred to in this section are companies having a share capital 7.

Register to be evidence. 40. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

The register of members is *prima facie* evidence of membership and the burden of

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1. Amrita v. Srish [1899] 26 Cal. 944; Manilal v. Gordhan Spinning &c. Co. [1917] 41 Bom. 76.
2. Amrita v. Srish [1899] 26 Cal. 944.
3. Union Indian Sugar Mills Co. v. Jai Deo [1922] 44 All. 151 at p. 154; see Greater Britain P.D. Corpn. [1924] 40 T. L. R. 488.
4. Indian Merchants Bank v. Jogindra Singh [1928] L. 234, 108 I. C. 192; Ex p. Shaw [1877] 2 Q. B. D. 463.
5. Mahadevi v. Motiram [1939] Pat. 603, 20 P. L. T. 703.
6. Onward Building Society [1891] 2 Q. B. 463.
7. *Vide* s. 32.

Register is *prima facie* **evidence.**

proving want of notice of allotment is on the person who alleges it 1. It is not conclusive, especially where other papers filed by a plaintiff contradict the register, even though the defendant does not adduce any evidence 2. "If names are put upon the register without any authority, the owners of those names are in no way responsible" 3.

The register of members is not absolutely conclusive as to the number of shares held by a person, but it is necessary, not only from the point of view of law but as a matter of policy, to see that it is as conclusive as it can be made consistently with a proper interpretation of the Companies Act. When a person has been treated as a shareholder and acted as such, he cannot go back and deny his position to protect himself from liability, specially when he has full knowledge of his real position 4. Cases are not unknown however where promoters put the names of persons of position on the register in the expectation that they would accept the shares, without any application on the part of the latter ; and when the company goes into liquidation or its uncalled capital is sold to a third person, the persons whose names are thus put on the register find themselves in a rather difficult position on account of the presumption arising under this section. In such cases the promoter may be ready with the plea that those persons made oral applications for shares. The legislature, it is submitted, ought to have made written application for shares compulsory.

In *Portal* v. *Emmens* 5 Lindley, J. said : "The true view of the Act 6 we take to be as follows :—1. If a proper register is kept, that register is *prima facie* evidence that a person whose name is on it is a shareholder. 2. If in addition it be proved that such a person has become, by subscribing to the prescribed sum or otherwise, entitled to a share in the company, the evidence that he is a shareholder is conclusive. 3. If there be no register, or if the register be so defective as to be inadmissible in evidence, other evidence must be adduced to prove that a person is a shareholer."

In proceedings before a Magistrate for penalties evidence may be given to prove entries in the register to be untrue 7.

Power for company to keep branch register in the United Kingdom.

41. (1) A company having a share capital may, if so authorised by its articles, cause to be kept in the United Kingdom a branch register of members (in this Act called a British register).

(2) The company shall, within one month from the date of the opening of any British register, file with the registrar notice of the situation of the office where such register is kept and, in the event of any change in the situation of such office or of its discontinuance, shall within one month from the date of such change or discontinuance, as the case may be, file notice of such change or discontinuance.

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1. Waryam Singh v. Eastern &c. Co. [1926] L. 414, 8 L. L. J. 240, 95 I. C. 252 ; Sundar Singh v. Kehr Singh [1933] L. 1016 ; Marwari Stores v. Gouri Sankar [1936] C. 327, 40 C. W. N. 661 ; Punjab Industrial Bank v. Byramji [1935] L. 157 ; Bakhshis Singh v. Khalsa Bank [1933] L. 1016, 147 I. C. 575.
2. Ramdas v. Cotton Ginning Co. [1887] 9 All. 366.
3. Per Lord Cairns in Reese River Silver Mining Co. [1869] L.R. 4 H.L. 64 at p. 80.
4. Peninsular Life Assurance Co. [1936] L. 226.
5. [1875] 1 C. P. D. 201 at pp. 212-13 ; affirmed *ibid* 664.
6. Companies Clauses Act, 1845.
7. Btiton Medical Assn. [1888] 39 Ch. D. 61.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Sub-s (3) is not in the English Act.

Regulations as to British register.

42. (1) A British register shall be deemed to be part of the company's register of members (in this section called the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the locality wherein the British register is kept.

(3) The company shall transmit to its registered office in India a copy of every entry in its British register as soon as may be after the entry is made; and shall cause to be kept at such office, duly entered up from time to time, a duplicate of its British register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a British register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a British register shall, during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep any British register, and thereupon all entries in that register shall be transferred to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such regulations as it may think fit respecting the keeping of a British register.

[**42A.** (1) *The provisions of sections 41 and 42 shall apply in relation to Burma as they apply in relation to the United Kingdom.*

(2) *In the application of the said provisions to Burma, references to a British register shall be construed as references to a Burma register*].

This new section has been inserted by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

Issue of share-warrants to bearer.

43. (1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share-warrant.

(2) *Nothing in this section shall apply to a private company.*

Amendment.

By the Companies (Amendment) Act, 1936 the original s. 43 has been re-numbered as sub-s. (1), and sub-s. (2) has been added. The reason for the amendment is that the issue of bearer share warrants is not compatible with the position of a private company as defined in the Act. See s. 2 (13) and notes thereto.

In the case noted below it was contended that the power of a company to issue stock warrants to bearer had been impliedly repealed by the English Companies Act of 1929 : *held*, that the Act kept alive the power to issue both classes of warrants to bearer [1].

Effect of share-warrant.

44. A share-warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

Share-warrants to bearer are negotiable by mercantile usage and are transferable by delivery. So, even if it has been previously stolen, a subsequent innocent purchaser for value gets a good title [2].

Registration of name of bearer of share-warrant.

45. The bearer of a share-warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members ; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

Position of bearer of share-warrant.

46. The bearer of a share-warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purpose defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

Entries in register when share-warrant issued.

47. (1) On the issue of a share-warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely :—

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[1] Pilkington v. United Rys. &c. Warehouses [1931] 144 L. T. 115.

[2] Webb, Hale & Co. v. Alexandria Water Co. [1905] 93 L. T. 339, 21 T. L. R. 572.

(*i*) the fact of the issue of the warrant ;

(*ii*) a statement of the shares or stock included in the warrant, distinguishing each share by its number ; and

(*iii*) the date of the issue of the warrant.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully continues or permits the default shall be liable to the like penalty.

Surrender of share-warrant.

48. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members ; and, on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.

Power of company to arrange for different amounts being paid on shares.

49. A company, if so authorised by its articles, may do any one or more of the following things, namely :—

(1) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares ;

(2) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up ;

(3) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Cl. (3). In the absence of such a clause in the articles of association, members are entitled to dividend in proportion to the nominal value of their shares, and not in proportion to the amount paid thereon 1. Payment of dividend in proportion to the amount paid up on each share was for the first time authorized in Table A of the Act of 1913 2.

Power of company limited by shares to alter its share capital.

50. (1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—

(*a*) increase its share capital by the issue of new shares of such amount as it thinks expedient ;

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1. Oakbank Oil Co. v. Crum [1882] 8 App. Cas. 65.
2. Vide reg. 98 of the present Act and notes thereto ; cf. reg. 72, Table A of the Act of 1882 printed as Appendix B.

(*b*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;

(*c*) convert all or any of its paid-up shares into stock and re-convert that stock into paid-up shares of any denomination ;

(*d*) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;

(*e*) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section * * * must be exercised *by the company in general meeting.*

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

(4) *The Company shall file with the registrar notice of the exercise of any power referred to in clause (d) or clause (e) of sub-section (1) within fifteen days from the exercise thereof.*

Amendment. In sub-s. 2 the words "with respect to sub-division of shares" after the word "section" have been omitted and for the words "by special resolution" at the end, the words "by the company in general meeting" have been substituted by the Companies (Amendment) Act of 1936. By the same Act sub-sections (3) and (4) of the original section have been omitted, subs-s. (5) has been re-numbered as sub-s (3) and the new sub-s. (4) has been added.

The original sub-sections (3) and (4) were as follows :

(3) Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(4) If a company makes default in complying with the requirements of sub-section (3), it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

The reason for the omission of these two sub-sections appears to be that the provisions thereof have been already incorporated in the new s. 25-A. No provision has however been made in this section for any penalty for default in complying with the new sub-s. (4). The alterations have been made for bringing the section into line with s. 50 of the English Companies Act of 1929.

The power is fiduciary.

The power to increase capital by the issue of new shares is a fiduciary power to be exercised by the directors *bona fide* for the general advantages of the company and they are not entitled to use their powers merely for the purpose of maintaining their control over the affairs of the company and for defeating the wishes of the existing majority of shareholders[1].

Sub-s. (1). The company can, "if so authorised by its articles", do the things authorized in the manner authorized. But if not so authorized by the articles, the company may take the necessary powers[2] by altering the articles in the mode provided by s. 20.

Suit by share-holder.

A suit by a shareholder for a declaration that the allotment of new shares to certain persons is not legal and that they have no powers as shareholders on the ground that the resolution authorizing the increase of capital by issuing new shares was invalid and ineffective, does not lie. Where no consequential relief, such as a prayer for rectification of the register of members by removing the names of new shareholders or for an injunction, is sought, the suit comes within the mischief of s. 42 of the Specific Relief Act and is consequently bad[3].

How and when can directors exercise power.

Cl. (a). Where the articles provide merely that "the company may increase its capital" without saying how, and contain the general clauses (as in Table A) enabling the directors to act generally on behalf of the company, the directors can exercise the power of increase[4]. But where the articles do not contain the requisite authority to increase, they should be amended by "special resolution", and the alteration of the articles as well as that of the capital may be effected by one resolution[4]. If the company passes a special resolution authorizing the creation and issue of new shares, that will in effect not only give authority to increase, but enable the directors to exercise that authority[5].

Where a company has power in its articles to increase its capital without a "special" or "extraordinary" resolution, it is unnecessary to do more than pass an ordinary resolution; or the company may confer on its directors the power to make the increase[6]. But it is otherwise if other articles require the sanction of the company in general meeting[7]. In that case a single shareholder holding all the shares of a class may constitute the meeting[8]. The intention to make the specific increase of capital must be embodied in the resolution[9].

Where the articles provide that the existing shareholders should have the option of taking the shares in the increased capital rateably and in proportion to their respective shares, a deviation from the provision cannot be made unless with the assent of all the shareholders[1]. On the increase of capital the new shares shall be offered to the members in proportion to their existing shares[2].

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[1] Piercy v. S. Mills & Co. [1920] 1 Ch. 77.

[2] See Boschoek Proprietary Co. v. Fuke [1906] 1 Ch. 148; Imperial Hydropathic Hotel Co. v. Hampson [1883] 23 Ch. D. 1.

[3] Jogesh v. Durga Mohan [1932] C. 714, 36 C. W. N. 638, 140 I. C. 76.

[4] Campbell's case [1873] 9 Ch. App. 1; see also Moseley v. Koffyfontein Mines [1910] 2 Ch. 382, 389.

[5] Held by the Full Court of Appeal in Campbell's case (supra).

[6] Moseley v. Koffyfontein Mines (supra).

[7] Koffyfontein Mines v. Moseley [1911] 1 Ch. 73, on appeal [1911] A. C. 409.

[8] East v. Bennett Brothers [1911] 1 Ch. 163.

[9] Mc Connel v. E. Prill & Co. [1916] 2 Ch. 57.

Fees and stamp.

In England stamp duty is to be paid on the amount by which the nominal capital is increased[3] : registered capital means authorized capital. As to the fees for registration of increase of capital see Table B, item No. 3.

The authority to increase is to be contrasted with the authority to reduce which authority can only be exercised by special resolution[4].

Consolidation of shares.

Cl. (b). If the alteration does not involve consolidation or division and does not involve an alteration of the memorandum of association, separate meetings of the classes are not required[5]. Where this is the case, the rights are frequently altered by an arrangement under s. 153[6]. If it does not involve any alteration of the memorandum, it may be done by special resolution without the anction of the Court[7].

Conversion of shares into stock and re-conversion.

Cl. (c). When shares have been fully paid up, but not before[8], they may be turned into stock of which notice must be given to the registrar under the next following section. The issue of partly paid up stock would be a nullity[8]. For distinction between share and stock see notes to s. 51.

Sub-division of shares.

Cl. (d). If no power is given either in the memorandum or the articles of association to sub-divide the share capital or to create any preference between different classes of shares, the company can take the power by altering the articles[9]. If the articles did not contain the requisite authority to sub-divide, they could be amended by special resolution and then the power had to be exercised by a subsequent special resolution. The two successive resolutions might be passed in three meetings[10].

When a reduction of capital has created shares not consisting of an integral amount, such shares may be consolidated and then sub-divided into shares of integral amount[11]. The section permits a consolidation of shares followed by a sub-division resulting from such consolidation to be carried by a single resolution[12].

Court's sanction when necessary.

In spite of the provisions of this section, a scheme of reduction of capital may be sanctioned by the Court under s. 55[13]. A company registered under the previous Acts may, with the confirmation of the Court, alter its objects or substitute a memorandum and articles for its deed of settlement without registering it under this Act[14].

All the powers mentioned in this section may be exercised contingently on the confirmation by the Court of a resolution for reduction of capital[15], and a single resolution for consolidation and sub-division of shares resulting from such consolidation may be valid 1.

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[1] Eastern F. Association v. Pestonje [1866] 3 Bom. H. C. R. 9 (O.C.).

[2] James v. Buena Ventura &c. Syndicate [1896] 1 Ch. 456

[3] Attorney General v. Anglo-Argentine Tramways Co. [1909] 1 K. B. 677.

[4] Vide s. 55.

[5] Re J. A. Nordberg Ltd. [1915] 2 Ch. 439 ; Re Schweppes Ltd. [1914] 1 Ch. 322.

[6] See notes to s. 153 post.

[7] Australian Estates Co. [1910] 1 Ch. 414.

[8] Home & Foreign Investment Co. [1912] 1 Ch. 72.

[9] Andrews v. Gas Meter Co. [1897] 1 Ch. 361.

[10] John Crossley & Sons [1892] W. N. 55 ; but see the amended sub-s. (2).

[11] North Cheshire Brewery Co. [1920] W. N. 149, 64 S. J. 463.

[12] Campbell's case (supra).

[13] Doloswella R. & T. Estates [1917] 1 Ch. 213.

[14] SS. 250 & 251 ; re Hongkong & China Gas Co. [1898] W.N. 158 ; re Copiapo Mining Co. [1899] W. N. 25, 6 Mans. 320 ; Euphrates & Tigris &c. Co, [1904] 1 Ch. 360.

[15] Salinas of Mexico [1919] W. N. 311 ; Australian Estates Co. [1910] 1 Ch. 414, 425 ; Welsbach I. G. Light Co. [1904] 1 Ch. 87, 91.

Notice to registrar of consolidation of share capital conversion of shares into stock, etc.

51. (1) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted any of its shares into stock, or re-converted stock into shares, it shall within fifteen days of the consolidation and division, conversion or re-conversion, file notice with the registrar of the same, specifying the share consolidated and divided, or converted, or the stock re-converted.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Distinction between "share" and "stock."

For the meaning of the word "stock" see notes to s. 29. The distinction between "share" and "stock" was explained by Lord Cairns in *Morrice v. Aylmar* 2 where it was pointed out that when converted into stock the shares might be assigned in fragments; but the stock should still be the qualification of directors and that meetings should be of persons entitled to this stock who meet and vote as shareholders in the proportion of shares which would entitle them to vote before the consolidation into stock.

One of the conveniences of stock, besides its divisibility, is that it becomes no longer necessary in a transfer to specify all the numbers of various shares comprised in the transfer : a transfer is made of so much stock.

A bequest of shares would include stock ; but a direction in a will to invest in preference stock does not justify investment in preference shares 3. If stock is issued as partly paid up, the issue is void 3. But the irregularity committed by a company in issuing fully paid stock without first issuing shares is a mere irregularity which will not in equity be held to avoid the transaction, but can be ignored 4.

Sub-s. (2) is not in the English Act.

Effect of conversion of shares into stock.

52. Where a company having a share capital has converted any of its shares into stock, and filed notice of the conversion with the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock ; and the register of members of the company, and the list of members to be filed with the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

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1. North Cheshire Brewery Co. (supra).
2. [1875] 10 Ch. App. 148 at p. 154.
3. Re Willis [1911] 2 Ch. 563.
4. Home & Foreign Investment Co. [1912] 1 Ch. 72.

53. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the registrar, in the case of an increase of share capital, within fifteen days after the passing,* * * of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

Notice of increase of share capital or of members.

(2) *The notice to be given as aforesaid shall include particulars of the classes of shares affected and the conditions (if any) subject to which the new shares are to be issued.*

(3) If a company makes a default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Amendment.

By the Companies (Amendment) Act, 1936, the words "or in the case of a special resolution the confirmation" after the word "passing" in sub-s. (1) have been omitted, the original sub-s. (2) has been re-numbered as sub-s. (3) and the new sub-s. (2) has been inserted.

54. (1) A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganize its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes :

Reorganization of share capital.

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class * * * and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section, a certified copy thereof shall be filed with the registrar within twenty-one days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.

Amendment.

By the Companies (Amendment) Act, 1936, the words "and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed" after the words "share capital of that class" in the proviso have been omitted on account of the new definition of special resolution [see s. 81 (2)].

Re-organization.

Buckley (Lord Wrenbury) in his Companies Act, 11th ed. at p. 315 says: "All modes of re-organizing the share capital, even when involving an interference with preferences or special rights attached to shares by the memorandum of association, can be effected as part of an agreement with members under the section, with the possible exception, whilst s. 45 of the Act of 1908 (s. 54 of the Indian Act) was in force, of the two classes of re-organization of capital falling within that section, and subject to the qualification that if the arrangement involves a dealing with capital, for which other sections of the Act prescribe special formalities, such formalities must also be complied with." Again, "It is no objection to an arrangement with classes of members under this section that it involves a winding-up of the company and a transfer of its undertaking to another company, including a foreign company, for fully or partly paid shares in that company for distribution amongst the different classes of members of the transferor company in manner or proportions provided by the arrangement. In such a case the Court may, but does not necessarily, insist upon dissentient members being given protection similar to that provided by s. 234 (s. 208-C of the Indian Act) in the case of transfer under that section without the sanction of the Court. If however the so-called arrangement is really a transfer under s. 234 *simpliciter*, but without giving dissentients the protection provided by that section, *quaere*, whether the transfer can be sanctioned as an arrangement under this section" 1.

Duty of Court.

"What the Court has to do", says Lindley L. J., "is to see first of all, that the provisions of the statute have been complied with; and secondly, that the majority has been acting *bona fide*. The Court also has to see that the minority is not being overridden by a majority having interest of its own clashing with those of the minority whom they seek to coerce. Further than that, the Court has to look at the scheme and see whether it is one as to which persons acting honestly......take a view which can be reasonably taken by business men. The Court must look at the scheme and see whether the Act has been complied with, whether the majority are acting *bona fide* and whether they are coercing the minority inorder to promote interests adverse to those of the class whom they purport to represent, and then see whether the scheme is a reasonable one or whether there is any reasonable objection to it, or such an objection to it as that any reasonable man might say that he could not approve of it" 2.

Mode of reorganization.

This section is confined to two modes of reorganization of share capital, namely, (a) by consolidation of shares of different classes, and (b) by division of shares into shares of different classes 3. It does not however apply to a scheme for total abolition of the existing classes and creation of fresh classes of shares 4. But a scheme of arrangement which alters any rights defined by

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1. Buckley's Companies Act, 11th ed. p. 316. See also Katni Cement & Industrial Co. [1937] B. 423, 39 Bom. L R. 675.
2. Alabama &c. Ry. Co. [1891] 1 Ch. 231.
3. Palace Hotel Ltd. [1912] 2 Ch. 438; J. A. Nordberg Ltd. (infra); E. D. Sassoon United Mills [1929] B. 38, 30 Bom. L. R. 598.
4. E. D. Sassoon United Mills [1929] B. 38: 30 Bom. L. R. 598.

the memorandum of association must satisfy the conditions laid down by this section, although the scheme does not include the consolidation of different classes of shares or the division of shares into shares of different classes 1.

In a reorganization of share capital under this section a company may divide each of its £ 1 preference shares on which 15s. has been paid, into two different classes of shares of 10s., called "A preference shares" and "B preference shares" respectively and treat the former as fully paid up and the latter as being 5s. uncalled 2.

Preferential rights.

Where preferential rights of members arise under the articles which provide for modification of those rights, they may be so modified without having regard to the provisions of this section, as those provisions only operate when the preferential rights are determined, not by the articles, but by the memorandum 3. But when the rights are determined by the memorandum, they cannot be interfered with unless the conditions required by this section are fulfilled 3. The proviso is one limiting the effect of the previous part of the section and is not in any sense an independent enactment operating beyond the limits of the particular section to which it is attached. Therefore in cases where a preference has been rightly given by the articles, such preference can be modified by special resolution 3.

Application of section.

It is not an enabling section. It limits the general power to make arrangements under s. 153. Its application is confined to the two cases mentioned in the section. In other cases a scheme of arrangement which interferes with rights conferred by the memorandum, *e. g.*, diminishes the rights of preference shareholders to dividends, may be validly effected under s. 153 4. But where the only persons interested in any profits in excess of the fixed dividend payable on the ordinary shares are the shareholders themselves, the Court ought, in the exercise of its discretion, confirm the special resolution for reorganizing the share capital 5.

Where one of the conditions in the memorandum of association is that the rights and privileges of different classes of shareholders are subject to variation, a resolution which has the effect of sweeping away the rights and privileges attached to ordinary and deferred shares and which leaves the two classes of shares with precisely the same rights, is perfectly valid and does not require the sanction of the Court. But where even after this resolution a deferred share cannot be sold as an ordinary share, a proposal to make these two classes of shares into one class involves a consolidation of the different classes of shares and such consolidation modifies the condition of the memorandnm of association 6.

Where the section does not apply.

This section does not however apply where the proposed scheme does not modify the memorandum or consolidate shares or affect preferential rights of shareholders; and the section is applicable only to arrangements which have the effect specified in sub-section (1) 7.

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1. Doecham Gloves, Ltd. [1913] 1 Ch. 226 [Palace Hotel Ltd. (supra) was not followed in this case].
2. Vine &c. Trust Ltd. [1913] 108 L. T. 709.
3. Australian Estates &c. Co. [1910] 1 Ch. 414.
4. J. A. Nordberg Ltd. [1915] 2 Ch. 439.
5. Garden Village Ltd. [1923] 1 Ch. 230.
6. British India Corpn. v. Shanti Narain [1935] A. 310, [1935] A. L. J, 527, 156 I. C. 1088.
7. Schweppes, Ltd. [1914] 1 Ch. 322.

Where by an agreement A. company was entitled to act as a manager of B. company and to receive in respect of each financial year of the B. company 50 per cent. of its net profits as well as a management share with very important rights attached to it, and B. company having desirous of putting an end to the management by A. company an agreement was prepared terminating the management in consideration of the payment to A. company of 100,000 l. to be raised by B. company by the issue of debenture stock and incidentally the management share was to be converted into an ordinary share, it was held that it was not *ultra vires* the B. company to enter into the proposed agreement, it being no objection to the agreement that it involved the redemption of the annual charge on the B. company's net profits out of capital raised for the purpose 1.

Sub-s. (1). To comply with the provisions of sub-section (1) a majority of three-fourths in value of the shareholders of that particular class must be present or represented when the resolution is passed ; and it must be passed at a meeting, voting by proxy being allowable when such votings are allowed by the articles 2.

Where a company by special resolution reorganized its share capital in such a manner that the liability of the company to the shareholders was reduced, but the nominal amount of the share capital was not reduced, it was held that the company had rightly adopted the procedure prescribed by this section in order to obtain confirmation of the reorganization scheme 3.

A resolution passed by half of the preference shareholders, who represent three-fourths of the share capital of their class, does not comply with the provisions of this section 4. Although a single member cannot constitute a "meeting" in the ordinary sense of the word, the context may show the word to be used in an unusual sense and in such a way as to include the formal consent of the sole member of the class, the consent of which is required to be obtained 5.

Proviso.

The proviso to sub-s. (1) does not apply to affecting the rights of ordinary shareholders by an issue of preference shares 6.

The wide powers which the Court has in confirming a scheme is well shown in the case where a dissentient shareholder was compelled to receive 4½% debentures for 5½% cumulative shares 7.

Class meetings.

"Only by the clearest words", observed Lord Blanesburgh, "and in full knowledge of their rights, will a class be bound by a resolution which, it is suggested, modifies or extinguishes those rights" 8. The opportunity afforded to the class of discussing their own affairs undisturbed by opposing or conflicting interests is the modest protection against possible oppression offered by a class meeting 9. As to how class meetings should be conducted see the last cited case.

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1. Investment Trust Corpn. v. Singapore Traction Co. [1935] Ch. 615 C. A.
2. Foucar & Co. [1913] W. N. 83, 29 T. L. R. 350.
3. Peebles Hotel Hydropathic Ltd. [1920] S. C. 303 ; see also Scottish India-Rubber Ltd. [1919] Sc. L. R. 56 (Ct. of Sess).
4. Arden Coal Co. [1922] S. C. 500.
5. East v. Bennett Brothers [1911] 1 Ch. 163.
6. Stewart Precision Carburretor Co. [1912] W. N. 100, 28 T. L. R. 335 ; but see E. D. Sasoon United Mills (supra).
7. Thomas De La Rue & Co. [1911] 2 Ch. 361.
8. Carruth v. Imperial Chemical Industries [1937] A. C. 707 (746). See also Quebrada Ry. &c. Co. [1888] 40 Ch. D. 363.
9. Carruth v. Imperial Chemical Industries, (supra) at p. 756.

An alteration such as is referred to in this section cannot be carried out under s. 153 alone without regard to the special provisions of this section 1. But if no consolidation or division of shares into different classes is involved, this section does not apply 2. A mere increase of the number of shares of any class does not alter the rights of the class within the meaning of this section or s. 153 2.

Distinction between this section and s. 153.

The various steps for reorganizing the capital and business can be taken at one and the same time and by a single resolution 3.

For preference and other classes of shares and the privileges &c. attached to them see notes to s. 6 and regs. 3, 4 and 98 of Table A.

It is not necessary to advertise a petition for reorganization of the share capital 4.

Reduction of Share Capital.

Restrictions on purchase by company or loans by company for purchase of its own shares.

54A. *(1) No company limited by shares shall have power to buy its own shares or the shares of a public company of which it is a subsidiary company unless the consequent reduction of capital is effected and sanctioned in the manner provided by sections 55 to 66.*

(2) No company limited by shares other than a private company, not being a subsidiary company of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company :

Provided that nothing in this section shall be taken to prohibit, where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business.

(3) If a company acts in contravention of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees.

(4) Nothing in this section shall affect the right of a company to redeem any shares issued under section 105B.

This section is new and has been inserted by the Companies (Amendment) Act, 1936. Sub-s. (1) replaces sub-s. (1) of s. 55 which has been omitted, sub-s. (2) and the proviso were suggested by s. 45, cl. (1) and proviso (a) of the English Act of 1929, and sub-s. (3) is on the line of sub-s. (3) of the aforesaid section of the English Act.

Sub.s. (1) is not in the English Act.

Sub-s. (2). In a recent English case where an agreement provided that a director and manager of a company should resign and transfer his share-holding in the company to another director for 250 l. and this sum was paid to him by a cheque drawn on the

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1. Doecham Gloves, Ltd. (supra).
2. Schweppes, Ltd. (supra).
3. North Cheshire Brewery Co. [1920] W. N. 149, 64 S. J. 463.
4. Ashanti Development Ltd. [1911] W. N. 144.

vocate High Court Jammu & Kashmir Srinagar

company's account, it was held that if the payment for the shares by the company's cheque was such as to contravene s. 45, cl. (1) [corresponding to sub-s. (2) of the present section] of the English Act of 1929 and render the company liable to a fine under sub-s. (3) (which was not proved in the case), the agreement was not thereby rendered invalid 1.

Ultra vires.

In the absence of a special power of cancellation or forfeiture of shares, the directors have no power to release shareholders from their liability or to cancel shares 2. A resolution, passed by a company authorizing the money of those shareholders who have not paid their allotment money and are not willing to remain as members to be returned, is *ultra vires* and cannot operate to relieve them of their liability as contributories 2. An article enabling members to sever all connections with the company and end all their liability, being opposed to this section, is *ultra vires* the company and the memorandum of association 3.

Company cannot deal in its own shares.

A company, even though it be empowered by its memorandum or articles of association to deal in the shares of companies, is not thereby entitled to deal in its own shares, and a purchase by the directors of its shares on behalf of the company is *ultra vires* 4. Directors have no power to cancel shares duly issued to a shareholder at his request and thus to reduce the company's capital 5. Provisions for option for a company to buy its own shares is *ultra vires* under the Acts of 1866 and 1882, as well as under the present Act 6.

Reduction of share capital.

55. (1) Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

(*a*) extinguish or reduce the liability on any of its shares in respect of share capital not paid up ; or

(*b*) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets ; or

(*c*) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

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1. Spink (Bournemouth) Ltd. v. Spink [1936] 1 Ch. 544.
2. Peoples Industrial Bank v. Jalpa Prasad [1922] 19 A. L. J. 351, 62 I. C. 450.
3. Madras N. P. Fund v. Natesa Sastri [1929] M. 773, 52 Mad. 915.
4. Jahangir v. Shamji [1866] 4 Bom. H.C.R. 185, O.C. ; Trevor v. Whitworth (infra).
5. Sorabji v. Ishwardas [1896] 20 Bom. 654.
6. Canji v. Colaba Press Co. [1912] 14 Bom. L. R. 521, 16 I. C. 49.

(2) A special resolution under this section is in this Act called a resolution for reducing share capital.

Amendment. By the Companies (Amendment) Act, 1936 sub-s. (1) of this section has been omitted and sub-sections (2) and (3) have been re-numbered as sub-sections (1) and (2) respectively. The provision of sub-section (1) has been transferred to s. 54A. The original sub-s. (1) was as follows :

55. (1) No company limited by shares shall have power to buy its own shares unless the consequent reduction of capital is effected and sanctioned in manner hereinafter provided.

Principle. In an application for reduction of capital under this section the following principles are applicable : (1) The company has power to reduce its capitlal ; (2) subject to confirmation by the Court, which is the safe-guard of the minority, the question of reducing capital is a domestic one for the decision of the majority ; (3) the company is to determine the extent, the mode and incidence of the reduction ; (4) the company may reduce the share capital of all its shareholders wholly or in part ; (5) the Court has to see that interests of the minority have been protected and no unfairness has been shown to it ; (6) in doing so the Court should keep in view the consideration that the decision has been arrived at by business men who are fully cognizant of their necessities and are the best custodians of their interests and should therefore be slow to interfere 1. Without throwing any doubt on the general proposition that shareholders acting honestly are usually better judges of what is to their commercial advantage than the Court, where it is proved that the majority of a class may have voted in the way they did because of their interests as shareholders in another class, little attention should be paid to the vote of the majority in considering whether the scheme is fair 2. In such a case the Court should itself decide the question of fairness or unfairness on the evidence before it 3.

Reduction without Courts's sanction. A company may reduce its capital without the sanction of the Court by—(a) forfeiting shares for non-payment of calls and the like, (b) paying off paid up capital out of accumulated profits 4, (c) cancelling shares by special resolution under s. 50, sub-sec. (1), cl. (e). A surrender of shares in consideration of a payment in money or money's worth by the company is a purchase by it of its own shares and is *ultra vires* 5. "Every surrender of shares, whether fully paid up or not, involves a reduction of capital which is unlawful, except where sanctioned by the Court. Forfeiture is a statutory exception and the only exception" 6. A surrender of shares to the company not involving any reduction of capital and not amounting to a purchase of its own shares is not however necessarily *ultra vires* 7. It may be done where a forfeiture can be justified 8. Surrender in all other cases is illegal 9.

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1. Khattar Electrical Engineering &c. Co. [1938] Pesh. 41, where the relevant English cases have been discussed.
2. Carruth v. Imperial Chemical Industries [1937] A. C. 707, per Lord Maugham.
3. Ibid, per Lord Russell of Killowen.
4. Neale v. City of Birmingham Tramways Co. [1910] 2 Ch. 464.
5. Trevor v. Whitworth [1887] 12 App. Cas. 409.
6. Per Cozens-Hardy L. J. in Bellerby v. Rowland & Marwoods Steamship Co. [1902] 2 Ch. 14 at p. 32.
7. Rowell v. John Rowell & Sons [1912] 2 Ch. 609 ; see also Denver Hotel Co. [1893] 1 Ch. 495.
8. Bellerby v. Rowland & Marwoods Steamship Co. [1902] 2 Ch. 14.
9. Lord Wallscourt's case [1899] W. N. 250, 7 Mans. 235.

"Capital."

In speaking of reduction of capital, the word "capital" means neither nominal capital to the exclusion of paid up capital, nor the latter to the exclusion of the former. A reduction of nominal capital which is paid up must be so made as not to affect the equilibrium of the company's balance-sheet to the prejudice of the company's creditors. This equilibrium is not disturbed where the reduction is effected, (a) by cancelling capital lost or unrepresented by available assets, or (b) by paying off capital in excess of the company's wants, because in either case the balance item on the debit or credit side of the balance sheet, as the case may be, is unaffected, but the section impliedly forbids the writing off of paid up capital which is not lost or unrepresented by available assets or returned, the result in that case being to disturb the equilibrium of the balance-sheet by striking out of the debit or liability side a sum representing paid up capital, leaving the credit or assets side unaffected 1.

When the directors knowing that the company is insolvent make payment of sums of money representing the uncalled capital due by them for shares, such payment will be treated as payment towards capital and not as a loan 2.

Authorization in articles necessary.

Reduction of capital cannot be effected unless it is authorized by the articles as originally framed or altered by special resolution 3, power in the memorandum of association being ineffective 4. This statutory power cannot be fettered 5. A company not having powers by its articles to reduce the capital, can take the power by passing a special resolution and at the second meeting exercise the power 6. Where a company had taken power by its articles to reduce its capital in any way in which under the statute it was authorized to do, it was held by the House of Lords that a scheme of reduction affecting the deferred shareholders only was not *ultra vires* and that the scheme was fair to both classes of shareholders 7. In the last cited case Lord Blanesburgh was of opinion that although, if the question had been open, the meeting of the deferred shareholders (not being a meeting exclusively attended by these shareholders) was not a separate meeting, the resolution approving the scheme must be taken to have been duly passed, as it had not been challenged by the appropriate procedure. But in the same case Lord Russell of Killowen and Lord Maugham expressed the opinion that although *prima facie* a separate meeting of a class should be a meeting attended only by members of that class, the meeting of the deferred shareholders having been properly convened, the presence of shareholders of another class was a matter relating to the conduct of the meeting, which lay in the hands of the chairman with the assent of those persons who were properly present and constituted the meeting, and as no objection was taken at the meeting, those present must be taken to have assented to the meeting being so conducted, and the resolution was accordingly valid.

It was not competent for a company to pass resolutions at the same extraordinary general meeting, *first* authorizing the reduction and *secondly* providing for the reduction in a certain way ; for at the time the latter resolution was passed, there was no power to

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1. Anglo-French Exploration Co. [1902] 2 Ch. 845, judgment of Buckley J.
2. Hari Ram v. Commercial Bank [1921] 19 A. L. J. 445, 62 I. C. 889.
3. Patent Invert Sugar Co. [1885] 31 Ch. D. 166 ; Oregon Mortgage Co. [1910] S. C. 964.
4. Dexine P. P. & Rubber Co. [1903] 88 L. T. 791, [1903] W. N. 82.
5. Ayre v. Skelsey's A. Cement Co. [1905] 20 T. L. R. 587, on appeal [1906] 21 T. L. R. 464.
6. John Crossley & Sons [1892] W. N. 55.
7. Carruth v. Imperial Chemical Industries [1937] A. C. 707.

reduce, as the former resolution could not be effective until confirmed at a subsequent meeting [1].

How reduction is to be effected.

Prima facie a reduction of capital should be an all round one *i.e.*, the same percentage should be paid off or cancelled or reduced in respect of each share, and the *pari passu* mode of reduction is the proper mode where there are several classes of shares [2], unless the preference shares have priority as regards capital in the winding up [3], in which case the loss should be thrown first on the ordinary shares [4]. The Court has however jurisdiction to confirm any kind of reduction subject to the creditors' right to object, notwithstanding that it affects the legal rights of classes [5]. To give the Court jurisdiction to entertain a petition for reduction, it is not essential to prove that the capital proposed to be cancelled is lost or unrepresented by available assets [5]. But if a resolution for reduction is in fact unfair, even the objection of a few opponents will prevail [6]. It is however no part of the business of a Court of Justice to determine the wisdom of a course adopted by a company in the management of its own affairs [6].

Where under the memorandum and articles of association, preference shareholders have no priority as to capital or voting powers but are merely entitled to a fixed cumulative dividend and the company has power to reduce capital, a rateable reduction on all the shares, preference and ordinary, though diminishing the actual preferential dividend, is not an alteration of the rights of the preference shareholders so as to require their sanction under an ordinary modification of rights clause [7]. But where it becomes necessary to cancel arrears of preference dividends, it requires an arrangement under s. 153 [8], unless the memorandum or the articles vest the requisite power in a class meeting [9].

A guarantor of preference dividends, who had made payments pursuant to the guarantee, can claim only to be subrogated to the rights of preference shareholders, and cannot claim to be repaid as a creditor by the company [10].

A scheme for reduction comes within the operation of this section, although it differentiates between the holders of the same class of shares to the extent of paying off some and not others and imposes upon the shareholders, whose shares are to be extinguished, the obligation to accept debenture stock in lieu of cash and also involves the advance to the company of the moneys to be utilized in redemption of the share capital by the very persons whose shares are to be redeemed [11]. The Court may make it a term of the confirmation that the cost of a dissentient shareholder who has assisted the Court by his criticism of the scheme shall be provided for by the company [11].

A reduction of capital may, with the sanction of the Court, be effected in any manner even though it involve doing things which without such sanction are entirely forbidden, e.g., the purchase by the company of its own shares, or a re-arrangement of the rights of the members 1, or a sub-division of shares in which the amount unpaid is not equally divided between the resulting shares 2.

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[1] Oregon Mortgage Co. (supra) ; but confirmation is no longer necessary, see the amended s. 81 *post*.

[2] House Property & Investment Co. [1912] 50 S. J. 505, [1912] W. N. 110.

[3] Credit Assurance &c. Corporation [1902] 2 Ch. 601.

[4] London & New York Corpn. [1895] 2 Ch. 860 ; Floating Dock Co. of St. Thomas [1895] 1 Ch. 691.

[5] Poole v. National Bank of China [1907] A. C. 229 ; Louisiana &c. Mortgage Co. [1909] 2 Ch. 552 ; Credit Assurance &c. Corporation (supra) ; British & A.T. &c. F. Corpn. v. Couper [1894] A. C. 399.

[6] Per Loreburn L. C. in Poole v. National Bank of China (supra) at p. 236.

[7] Mackenzie & Co. [1916] 2 Ch. 450.

[8] Australian Estates &c. Co. [1910] 1 Ch. 414 ; Hoare & Co. [1910] W. N. 87.

[9] Hoare & Co. [1904] 2 Ch. 208.

[10] Walter's Deed of Guarantee [1933] 1 Ch. 321.

[11] Thomas De La Rue & Co. [1911] 2 Ch. 361. In this case a dissentient shareholder was compelled to receive 4½% debentures for 5½% cumulative shares.

Where of the ordinary £ 5 shares of a company, there were 6,047 fully paid shares and 53,953 shares which were paid up only to the extent of £ 1 per share, and the company, having accumulated a large reserve fund, passed and confirmed a special resolution for the return of £ 4 per share on the 6,047 fully paid shares, it was held that the company had power to reduce the paid up capital in the manner proposed by the special resolution 3.

A petition to the Court for confirmation of a scheme for reduction of capital was opposed by the deferred shareholders. The scheme was that every 2 *l.*, of ordinary share should be converted into 1 *l.*, of ordinary share ; but the reduction was thought advisable having regard to the conflict of interests between the ordinary and the deferred share capital on any dividend distribution. Article 44 of the company's articles of association gave power to reduce the capital by paying off capital, cancelling capital lost or unrepresented by available assests, or reducing the liability on the shares or otherwise as might seem expedient. Arts. 71 and 72 required the assent of each class of shareholders by an extraordinary resolution passed at a meeting of such class. There was no suggestion of any want of good faith on the part of the directors : *held* (1) that Art. 44 was sufficient to allow reduction in the manner proposed ; (2) that there was a proper holding of a separate meeting of each class of shareholders, though at such a meeting shareholders of other classes were present without voting ; (3) that a circular sent with the notice of the meeting was sufficient to convey all the information necessary, and any imperfection in it had not caused any misapprehension ; (4) that it was not necessary that the circular should disclose the holdings of the directors in the various classes of shares ; and (5) that although the scheme conferred a power on the majority to bind a minority, the Court ought to approve it as one for the benefit of that class, and it was a question in any case which could be far better decided by the shareholders themselves 4.

Reduction of capital cannot be effected as a scheme under s. 153 *post*, unless the proper steps are also taken under ss. 55 to 61.

Where reserve fund is mixed with general assets.

If there is a reserve fund which is mixed with the general assets of the company and allowed to rest in account only, as is often done, the general rule is to attribute to the reserve fund the same proportion of any loss of capital as the amount of the reserve fund bears to that of the nominal capital 5.

Where shares have been forfeited.

Where shares have deen forfeited, the amount paid up before forfeiture may be written off and the shares treated as having nothing paid thereon 6. Fully paid up shares cannot be forfeited and therefore cannot be validly surrendered, even as a gift, to the company 7. A surrender or forfeiture of shares is in fact a reduction, and it cannot be done without the Court's sanction 8.

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1. British & A. T. &c. Corporation v. Couper [1894] A. C. 399 ; Credit Assurance &c. Corporation (supra). 2. Doloswella Rubber Estates [1917] 1 Ch. 213.
3. Neale v. City of Birmingham Tramways Co. [1910] 2 Ch. 464, [1910] W. N. 175.
4. Imperial Chemical Industries, Ltd. [1936] 154 L. T. 705 C. A.
5. Hoare & Co. (supra).
6. Victoria (Malaya) Rubber Estates [1914] W. N. 307, 58 S. J. 706.
7. Bellerby v. Rowland & Marwoods Steamship Co. [1902] 2 Ch. 14.
8. Munt's case [1856] 22 Beav. 55 ; Spackman v. Evans [1868] L. R. 3 H. L. 171 ; Houldsworth v. Evans [1868] L.R. 3 H.L. 263.

Reduction of paid up capital only.

A company may by special resolution reduce its paid up capital without reducing its nominal capital, the special resolution being to the effect that the accumulated profits shall be returned to the members in reduction of the amount paid up on their shares, the liability on the shares being increased by the same amount. If this repayment is made out of the profits, the Court's sanction is not required [1]. Capital may be diminished by cancelling shares which have not been taken or agreed to be taken. This may, if the articles so provide, be done by an ordinary resolution ; *vide* s. 50, sub-s. (1), cl. (e). Where a cancellation of shares is not permissible under s. 50, the Court may sanction such reduction of capital under this section if the provisions hereof are complied with [2].

Special resolution.

Sub-s. (2). The power of reduction must be exercised by passing a special resolution. If minutes are properly signed, no evidence will be required to prove that the meetings were properly convened [3]. Where of twelve shareholders present at the general meeting eight voted for and two against reduction and the remaining two did not vote, it was held that the resolution was not effective inasmuch as a majority of three-fourths of the members entitled to vote and present at the meeting [4] had not voted in favour of the resolution [5]. The words "in any way" in this sub-section gives effect to the decision of the House of Lords in *Poole* v. *National Bank of China* [6].

Where capital consists of stock only.

Where the capital consists only of stock, a reduction can be effected by cancelling a part of the stock. In such a case the holding of each stock-holder could be reduced by so much per cent. being the proportion which the sum to be written off bears to the amount of the issued stock [7].

Procedure.

Sub-s. (2) Cl. (b). It is not always necessary or essential for the Court to which a petition for reduction of capital is presented to satisfy itself that there has been a loss of capital. The only serious question is whether or not the company had duly passed its special resolution [8]. Where however the reduction of the capital is based on the ground that capital has been lost or unrepresented by available assets, it is always prudent to proceed on some evidence [9]. Where the person opposing the petition accepts the statement of the company that there has been loss of capital, the Court should act upon the assumption that there is evidence of loss of capital [9]. Where such an application is opposed by a shareholder on the ground that certain persons who have voted for the resolution for reduction of capital were not duly qualified as shareholders to vote, but no steps have been taken to have the register of members rectified under s. 38, the onus is on the shareholder opposing the petition to substantiate his allegations [9].

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[1] See Neale v. City of Birmingham Tramways Co. (supra).

[2] Doloswella Rubber Estate (supra).

[3] Leicester Mortgage Co. [1894] W. N. 108, 116 ; 38 S. J. 531, 564 ; Omnium Investment Co. [1895] 2 Ch. 127.

[4] Vide s. 81.

[5] John T. Clarke & Co. [1911] S. C. 243.

[6] [1907] A. C. 229.

[7] Credit Assurance &c. Corpn. (supra).

[8] Louisiana &c. Mortgage Co. [1909] 2 Ch. 552 ; Marwari Stores v. Gourishankar [1936] C. 327, 40 C. W. N. 661 ; Poole v. National Bank of China (supra).

[9] Marwari Stores v. Gourishankar (supra) ; Caldwell v. Caldwell & Co. [1916] W. N. 70; see also Pinkney & Sons Steamship Co. [1892] 3 Ch. 125 and Lousiana &c. Mortgage Co. [1909] 2 Ch. 552.

Sub-s. (2), cl. (c). This includes capital which can only be called up in case of the company going into liquidation[1]. The petition and affidavit should state the fact that the amount to be returned is in excess of the company's requirements[2].

Court's power is discretionary.

Reduction of capital may be sanctioned or disallowed at the discretion of the Court[3]; so any scheme which works unfairly as regards the interest of the minority may be disapproved[3]. But a fair scheme will be sanctioned, even if it effects an alteration of the respective rights of classes of shareholders[4].

Power of reduction.

It is doubtful whether a company can contract itself out of the power to reduce its capital which is conferred upon it by the Act and the articles[5]. Subject to the confirmation by the Court, which is the safeguard of the minority[4], the question of reduction of capital is one for the decision of the majority[5], and the Act leaves the company to determine the extent, the mode and the incidence of the reduction and the application of any capital moneys which the reduction may set free[6].

Unauthorized reduction of capital will be restrained by the Court[6].

An unlimited company can reduce its capital in any way its memorandum and articles allow[7].

Application to Court for confirming order.

56. Where a company has passed * * a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

The words "and confirmed" after the word "passed" have been omitted by the Companies (Amendment) Act, 1936.

What the petition should contain.

Where there is more than one class of shares, a petition for reduction of capital should state whether or not there is any priority as to capital[8]. The petition must be supported by affidavits and a copy of the memorandum and articles of association, and the original minute-book of the proceedings must be made an exhibit[9].

Questions to be considered.

In an application under this section the Court is only concerned to confirm the proposed reduction and not the resolution passed by the company[10]. The only questions to be considered by the Court are: (1) Ought the Court to refuse its sanction to the reduction out of regard to the interests of those members of the public who may be induced to take shares in the company? (2) Is the reduction fair and equitable as between different classes of shareholders? Where the reduction is shared by all and is designed to work justly and equitably, and where it does not involve dimunition of any liability in respect of any unpaid capital or payment to any shareholder of any paid up capital and there is evidence regarding the loss of capital and non-representations of available assets, there is nothing to prevent the Court from confirming such reduction 1.

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[1] Midland Ry. Carriage &c. Co. [1907] W. N. 175.

[2] Tarapaca & Tocapilla Nitrate Co. [1917] W. N. 356, 62 S. J. 122.

[3] Barrow v. Haematite Steel Co. [1900] 2 Ch. 846, on appeal [1901] 2 Ch. 746.

[4] Credit A. & G. Corporation [1902] 2 Ch. 601.

[5] Barrow v. Haematite Steel Co [1888] 39 Ch. D. 582 at p. 596; British & A. T. Finance Corpn. v. Couper. [1894] A. C. 399.

[6] Holmes v. Newcastle &c. Abattoiar Co. [1875] 1 Ch. D. 682; Hope v. International Financial Society [1877] 4 Ch. D. 327 and Bannatyne v. Direct Spanish Telegraph Co. [1886] 34 Ch. D. 287.

[7] Borough Commercial & Building Society [1893] 2 Ch. 242.

[8] Mackenzie & Co. [1916] 2 Ch. 450.

[9] Omnium Investment Co. [1895] 2 Ch. 127.

[10] In re Hyderabad (Deccan) Co. [1897] 75 L. T. 23; Poole v. National Bank of China [1907] A.C. 229, per Lord Macnaghten.

Simultaneous resolution to increase capital.

Where along with the resolution as to reduction of capital, another resolution is passed for the increase of capital by issue of new shares and this fact is stated in the application under this section with the prayer for sanction of the new scheme of reorganization, but the same is subsequently withdrawn on the objection of some shareholders, the increase of capital does not fall to be cons'dered by the Court under the present section, as the function of the Court does not extend to the exercise of the paternal care of the shareholders of a company, for such matter exclusively falls within the internal management of the company 1. In the last cited case the creditors of the company were not concerned at all.

Condition giving jurisdiction.

In *Poole v. National Bank of China* 2 Lord Macnaghten observed: "The condition that gives jurisdiction, is not proof of loss of capital or proof that capital is unrepresented by available assets, or that capital is in excess of the wants of the company. The jurisdiction arises whenever the company seeking reduction has duly passed a special resolution to that effect."

Addition to name of company of "and reduced."

57. On and from the *passing* by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from *the making of the order confirming the reduction*, the company shall add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company:

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

Amendment.

In this section for the word "confirmation" in the first line the word "passing" has been substituted by the Companies (Amendment) Act, 1936. By the same Act for the words "the presentation of the petition for confirming the reduction" after the words "on and from', the words "the making of the order confirming the reduction" have been substituted. The first alteration had to be made on account of the new definition of "special resolution" which no longer requires confirmation [see s. 81 (2), *post*]. The effect of the second alteration is that the company is not required to add the words "and reduced" to its name from the presentation of the petition for confirming the reduction, but it will have to add those words after the making of the order confirming the reduction.

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1. Bengal-Burma Steam Navigation Co. [1939] R. 47.
2. [1907] A.C. 229.

Object of the addition.

The addition of the words "and reduced" is required in order to give warning to the public of the financial position of the company 1. The fact that the company is carrying on business abroad will not necessarily induce the Court to dispense with the use of those words 2. But in a proper case, where the use of the words "and reduced" has greatly prejudiced the company's credit by leading foreign customers to suppose that the company might be unable to meet its obligations, the Court may limit the time for use of the words to a short period, say fourteen days 3. The time usually ordered is one month 4.

Consequences of failure to make the addition.

Where the company failed to add the words "and reduced" to its name after the confirmation of the resolution for reduction, the petition for confirmation by the Court was incompetent 5. In the case noted below the Court dispensed with use of the words on the common seal of the company, but otherwise ordered the words to be used for one month from the date of the order 6. If the company is desirous of not using the words at all, it should make an application to that effect at the time of presentation of the petition 7. The application must be supported by affidavit 8.

Objections by creditors and settlement of list of objecting creditors.

58. (1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

Private company.

The Court will not readily accede to the prayer of dispensing with intimation and advertisement of the petition where the company is a private one and a family concern 9.

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1. Pinkney & Sons Steamship Co. [1892] 3 Ch. 125.
2. Lindner & Co. [1911] W. N. 66.
3. Sanders, Rehders & Co. [1919] W. N. 103. For cases where the words were allowed to be dispensed with see Scottish Power Co. [1917] S.C. 123 and Australian Estates Co. [1910] 1 Ch. 414 and Sumatra T. Plantations Co. [1898] W.N. 80.
4. Ocean Queen Steamship Co. [1893] 2 Ch. 666; Monmouthshire Steel Co. [1906] W.N. 128.
5. John T. Clarke & Co. [1911] S. C. 243; but see the amendment.
6. Andrew, Knowles & Sons [1912] W. N. 300; see also Hoare & Co. [1910] W. N. 87.
7. Pelsall Coal Co. [1890] W. N. 222.
8. Maxim Western Electric Co. [1888] W. N. 211; 59 L. T. 722.
9. G. Mackay & Co. [1915] 52 Sc. L. R. 64.

Creditors' right to object.

Where a reduction of capital does not involve diminution of assets and there has been no default by the company under the provisions of its debenture deed, a debenture-holder or creditor, and in particular a secured creditor, must make out a strong case before the Court will direct that he is entitled to object to the reduction, and the Court will not exercise its discretion in favour of the debenture-holders where there is no evidence that the assets are an insufficient security 1.

Sub-s. 2. The language of sub-s. (2) is imperative. The Court cannot dispense with the procedure even if there is no creditor 2.

Power to dispense with consent of creditor on security being given for his debt.

59. Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount (that is to say),—

(*i*) if the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(*ii*) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

Debenture holders.

Debenture-holders may, on receiving notice by advertisement, appear and claim to be entered on the list and are, if they fail to do so, to be excluded from the right of objecting 3. Creditors named in the list whose debts are secured, but not yet due, and who have neither assented nor dissented, must be taken to have assented 4.

Consent of creditors.

An extraordinary resolution passed by the majority at a meeting of debenture-holders is a sufficent consent of all the debenture-holders 5.

Order confirming reduction.

60. The Court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured, may

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1. Meux Brewery Co. [1919] 1 Ch. 28.
2. Hydraulic Power & Smelting Co. [1914] 2 Ch. 187; Lamson Store Service Co. [1895] 2 Ch. 726.
3. Credit Foncier of England [1871] 11 Eq. 356. See also Hydraulic Power Co. (supra).
4. Ibid (Credit Foncier); but see Patent Ventilating Granary Co. [1879] 12 Ch. D. 254.
5. See Hydraulic Power & Smelting Co. (supra).

make an order confirming the reduction on such terms and conditions as it thinks fit.

Consent. Where debentures to bearers were outstanding and the names of the bearers could not be ascertained, the Court allowed unanimous resolution of a meeting of debenture-holders, at which 87 per cent. of the issue was represented, to suffice as equivalent to the consent of all 1.

If the debt is admitted or proved or is an ascertained sum, the whole amount must be set aside, and if the company refuses to do it, sanction to the reduction may be refused 2.

Power to confirm is discretionary. The Court has an absolute discretion to confirm 3, or refuse 4 to confirm, the reduction or impose such terms and conditions on the company, as it thinks fit 5. The only express statutory limitation is that certain measures must be taken for the protection of the creditors. The Court cannot, except in exceptional cases, review the opinion of the company in regard to its domestic or commercial questions 6. The Court has power, in a proper case, to confirm a resolution for reduction of capital notwithstanding that the voting powers may thereby be affected 7.

Scheme under s. 153. If a scheme of arrangement under s. 153 involves a reduction of capital, all the requirements of the Act with regard to reduction must be complied with; and it is necessary to advertise the petition for sanctioning the scheme, unless the Court has dispensed with any advertisement 8.

Scheme involving alteration of rights. A scheme of reduction of capital is not necessarily unfair or inequitable because it involves an alteration of the rights of voting and priority as between the different classes of stock-holders 9.

61. **Registration of order and minute of reduction.** (1) The registrar on production to him of an order of the Court confirming the reduction of the share capital of a company, and on the filing with him of a certified copy of the order and of a minute (approved by the Court) showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

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1. Hydraulic Power & Smelting Co. (supra).
2. Palace Billiard Rooms v. City Property Corporation [1912] S. C. 5 (Ct. of Sess).
3. James Colmer Ltd. [1897] 1 Ch. 524.
4. Direct Spanish Telegraph Co. [1887] 34 Ch.D. 307 ; Barrow Haematite Steel Co. [1901] 2 Ch. 746.
5. Caldwell v. Caldwell & Co. [1916] W. N. 70, [1916] S. C. (H.L.) 120 ; Pinkney & Sons Steamship Co. [1892] 3 Ch. 125 ; Louisiana &c. Mortgage Co. [1909] 2 Ch. 552.
6. Leicester Mortgage Co. [1894] W. N. 108, 38 S. J. 531.
7. Caldwell v. Caldwell & Co., supra ; Pinkney & Sons Steamship Co. [1892] 3 Ch. 125 ; Louisiana &c. Mortgage Co. [1909] 2 Ch. 552.
8. White P. &. Y. Ry. Co. [1918] W. N. 323, 63 S. J. 55.
9. Welsbach I. G. Light Co. [1904] 1 Ch. 87.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

Form and contents of the minute for reduction.

The minutes for reduction of capital must contain, among other particulars, the denoting numbers of the shares referred to therein ; the notice of registration of such minutes need not however contain the denoting numbers, but may be in such shortened form as the Court may direct [1]. The minutes must ctontain the denoting numbers of the shares where they are not all paid up to the same extent [2]. This will not be excused ; but if the minutes are very complicated, a shortened form of advertisement may be allowed [1]. For what the minutes and memoranda should contain see notes [1] & [3].

For the form of the minute where the scheme for reduction involves a reorganisation of capital see cases noted below [4].

The form of minute to be registered pursuant to this section should contain a statement of sub-division of the share capital as effected by the resolution for reduction, but need not contain the original numbers of the shares, nor the fact that nothing has been paid up on the unissued shares [4].

Registrar's certificate conclusive.

The registrar's certificate is conclusive evidence that the requirements of the Act have been complied with [5], though it appeared afterwards that the company had no power under the articles to reduce its capital or that the special resolution for reduction was invalid [6].

Minute to form part of memorandum.

62. (1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein, and shall be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not ex-

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1. Oceana Development Co. [1912] W. N. 121, 138 ; 56 S. J. 537.
2. Solway Steamship Co. [1894] 61 L.T. 659.
3. Thomas Wolfe & Sons [1912] W. N. 286.
4. Salinas of Mexico [1919] W. N. 311 ; but see North Pole Ice Co. [1924] W. N. 131 ; J. Dampney & Co. [1924] W.N. 200 ; Anglo-French Exploration Co. [1902] 2 Ch. 845, 858.
5. Walker & Smith Ltd. [1903] W. N. 82, 88 L. T. 792 ; in this case the certificate was held conclusive although there was no power under the articles to reduce the capital.
6. Ladies' Dress Association v. Pulbrook [1900] 2 Q. B. 376.

ceeding ten rupees for each copy in respect of which default is made, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Liability of members in respect of reduced shares.

63. (1) A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute :

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then—

(*i*) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt, or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration ; and

(*ii*) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor.

64. If any officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonment which may extend to one year, or with fine or with both.

Publication of reasons for reduction.

65. In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

The Court rarely acts under this section, but may do so where the loss has been very large and sudden[1].

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

66. A company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

Variation of Shareholders' Rights.

Rights of holders of special classes of shares.

66A. (1) *If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than ten per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and where any such application is made the variation shall not have effect unless and until it is confirmed by the Court.*

(2) *An application under this section must be made within fourteen days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.*

(3) *On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard*

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[1] Truman, Hanbury, Buxton & Co. [1910] 2 Ch. 498.

and appear to the Court to be interested in the application, may, if it is satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) *The decision of the Court on any such application shall be final.*

(5) *The company shall within fifteen days after the service on the company of any order made on any such application forward a copy of the order to the registrar and, if default is made in complying with this provision, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty Rupees.*

(6) *The expression "variation" in this section includes "abrogation" and the expression "varied" shall be construed accordingly.*

This new section has been inserted by the Companies (Amendment) Act, 1936. It is a verbatim reproduction of s. 61 of the English Act of 1929 except this : that for the words "liable to a default fine" in sub-s. 5 of the English Act, the words "liable to a fine not exceeding fifty rupees" have been substituted. This section may come into conflict with s. 54. In the English Act of 1929 s. 45 of the English Act of 1908 (corresponding to s. 54) was not re-enacted. See Introduction.

Sub-s. (1). The presence, at a separate meeting of the holders of one class of shares, of holders of a different class not voting either by show of hands or on a poll, does not invalidate the meeting as a separate class meeting, or the poll taken thereat [*Carruth* v. *Imperial Chemical Industries* [1936] 1 Ch. 587, C. A. affirmed by the House of Lords in *Carruth* v. *Imperial Chemical Industries* [1937] A. C. 707. See notes to s. 54 and s. 55 *ante*.

Registration of Unlimited Company as Limited.

Registration of unlimited company as limited.

67. (1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited or any company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of, the company before the registration, and those debts, liabilities, obligations and contracts may be enforced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section, the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion

of the original registration of the company; but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

Power of unlimited company to provide for reserve share capital on re-registration.

68. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :—

(*a*) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called up except in the event and for the purposes of the company being wound up ;

(*b*) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

Reserve liability of limited company.

69. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Reserve capital.

After the special resolution such a capital cannot be charged by the company under a power in its memorandum and articles of association to charge its uncalled capital 1. Reserve capital cannot be turned into ordinary capital without leave of the Court and it cannot be dealt with by the directors 1. The reserve capital cannot be cancelled on a reduction of capital 2.

Unlimited Liability of Directors.

Limited company may have directors with unlimited liability.

70. (1) In a limited company the liability of the directors or of any director may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the

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1. Bartlett v. Mayfair Property Co. [1898] 2 Ch. 28 ; Irish Club Co. [1906] W. N. 127.
2. Midland Ry. Carriage Co. [1907] W. N. 175.

person holding that office will be unlimited and the promoters and officers of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director or proposer makes default in adding such a statement, or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Special resolution of limited company making liability of directors unlimited.

71. (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director.

(2) Upon the *passing* of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum. * * * * * *

Amendment.

By the Companies (Amendment) Act, 1936 the word "passing" in sub-s. (2) has been substituted for the word "confirmation", as under the new definition of "special resolution" [*vide* s. 81 (2)] it is no longer required to be confirmed.

By the same Act the following words after the word "memorandum" in sub-s. (2) have been omitted, namely: "and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution." These words were rendered unnecessary on account of the new s. 25-A. By the said amending Act sub-s. (3) has been omitted.

The original sub-s. (3) was as follows :—

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made ; and every officer of the company who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

Registered office of company.

72. *(1) A company shall as from the day on which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.*

(2) Notice of the situation of the registered office and of any change therein shall be given within twenty-eight days after the

date of the incorporation of the company or of the change, as the case may be, to the registrar who shall record the same.

(3) The inclusion in the annual return of a company of the statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this section.

(4) If a company carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.

Amendment.

By the Companies (Amendment) Act, 1936 this section has been substituted for the original s. 72 in which there was no definite time limit within which a company should have a registered office or within which the notice of its situation or change should be given to the registrar. This new section reproduces s. 92 of the English Act of 1929. The old s. 72 was in the following terms :

Registered office of company.

72. (1) Every company shall have a registered office to which all communications and notices may be addressed.

(2) Notice in writing of the situation of the registered office, and of any change therein, shall be filed with the registrar, who shall record the same.

(3) If a company carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.

Service must be effected at registered office.

A summons to appear before a Magistrate must be served at the registered office, and appearance by a solicitor to raise a point of substance only is not a waiver of the objection 1. Where there is no registered office, service at the office in fact used by the company will be sufficient 2. Where there is no office, the company having ceased to carry on business, service on some of the late officers may be allowed 3. Service at any other place, even if the company carries on business there, is insufficient 1.

Where the registered office of a company still exists at the usual place, but a part of the company's business has been shifted to some other place without any notification of such change to the registrar, all the notices &c. must be addressed to the usual registered office 4. In the last cited case Panckridge J. observed : "I find myself unable to accept Mr. S. C. Roy's contention that s. 72 shows that a resolution to change the registered office is sufficient and that the only effect of failure to notify the change is to render the company liable to fine under sub-s. 3."

In suit.

In a suit against a corporation the summons may be served—(a) on the secretary or any director or principal officer of the corporation; (b) by leaving or sending it by post addressed to the corporation at the registered office, or if there is no registered office, then at the place where the corporation carries on business 5. As to the mode of service of any document on a company see s. 148.

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1. Pearks, Gunston & Tee Ltd. v. Richardson [1902] 1 K. B. 91.
2. Fortune Copper Mining Co. [1870] L. R. 10 Eq. 390.
3. Gaskell v. Chambers [1858] 26 Beav. 252.
4. Janbazar Manna Estate, Ltd. [1931] C. 692, 58 Cal. 716, 133 I. C. 321.
5. O 29, r. 2, C. P. C. ; see also s. 20, C. P. C., Expln. II ; but see Hope Mills v. Vithaldas [1910] 12 Bom. L. R. 730.

73. Every limited company—

Publication of name by a limited company.

(*a*) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible and in English characters, and also, if the registered office be situate in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place ;

(*b*) shall have its name engraven in legible characters on its seal ;

(c) shall have its name mentioned in legible English characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

Object.

The object of this section is to make the company itself continually bring to the notice of those who dealt or might deal with it, the fact that it is a limited concern. This section has nothing to do with advertising the whereabouts of a company or affording facilities to members of the public in finding its place of business 1.

Requirements how satisfied.

The requirements of the section would be satisfied by a board of the necessary conspicuousness and legibility outside the office room inside the building in which it is situate and therefore it cannot be said that when an office is situated within a compound, the name of the company should be painted or affixed outside the compound as well as outside the office 1.

Construction.

This section being a penal provision should be construed strictly. The words "outside of every office" in cl. (a) of the section cannot be construed to mean outside the premises in which the office is situate 1.

Use of the word "limited."

The abbreviations "Ltd." or "Ld." may be used for the word "Limited" 2. If a limited company makes a contract without using the word "Limited," the directors who make the contract on behalf of the company will be personally liable 3. For the protection of the public the strictest accuracy is to be observed in this respect 4. See notes to s. 88, *post*.

As to the company's seal, see notes to s. 29 and reg. 76, Table A.

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1. Dr. H. L. Batliwalla Sons & Co. v. Emperor [1941] B. 97.
2. F. Stacey & Co. v. Wallis [1912] 106 L. T. 544.
3. Atkins & Co. v. Wardle [1889] 58 L. J. Q. B. 377, on appeal [1889] 5 T. L. R. 734 ; Penrose v. Martyr [1858] E. B. & E. 499, 28 L. J. Q. B. 28 ; Chapman v. Smethurst [1909] W. N. 65, reversed on appeal in [1909] 1 K. B. 927.
4. Nassau Steam Press v. Tyler [1894] 70 L. T. 376 ; but see Dermatine Co. v. Ashworth [1905] 21 T. L. R. 510.

74. (1) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

Panalties for non-publication of name.

(2) If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any bill-head, letter paper, notice, advertisement or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Company described by a wrong name.

Where *South Shields Salt Water Baths & Co.* was described in a bill as the *Salt Water Baths Ltd.*, it was held that the directors were personally liable on the bill 1. So it is of great importance to see that the name of the company is fully and correctly written in the bill of exchange, hundi &c. Where the directors describe the company by a wrong name on a bill accepted by them on behalf of the company, they will be personally liable 2.

Sub-s. (2). The word "holder" in sub-sec. (2) means, in the case of an order for goods, the person to whom the order is given 3.

75. (1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.

Publication of authorised as well as subscribed and paid-up capital.

(2) Any company which makes default in complying with the requirements of this section and every officer of the com-

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1. Atkins & Co. v. Wardle (supra) ; Dermatine & Co. v. Ashworth (supra).
2. Nassau Steam Press v. Tyler (supra).
3. Civil-Service Co-operative Society v. Chapman [1914] W. N. 369, 30 T. L. R. 679.

pany who is knowingly a party to the default shall be liable to a fine not exceeding one thousand rupees.

This section is not in the English Act.

Meetings and Proceedings.

76. (1) *A general meeting of every company shall be held within eighteen months from the date of its incorporation and thereafter once at least in every calendar year and not more than fifteen months after the holding of the last preceding general meeting.*

Annual general meeting.

(2) *If default is made in holding a meeting in accordance with the provisions of this section, the company and every director or manager of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees.*

(3) *If default is made as aforesaid, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.*

Amendment.

By the Companies (Amendment) Act, 1936, this section has been substituted for the original s. 76. This brings it into line with s. 112 of the English Act of 1929. Compare the amended s. 32. In sub-s. (1) the words "eighteen months" were substituted by the Select Committee for the words "one year" in the Bill, and the word "wilfully" was added in sub-s. (2). Compare the amended ss. 32 and 131.

The original s. 76 was in the following terms :

76. *(1)* A general meeting of every company shall be held once at the least in every year, and not more than fifteen months after the holding of the last preceding general meeting and, if not so held, the company and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees.

Annual general meeting.

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

Scope.

The terms of the section are mandatory. They make no reference to the balance-sheet. The section has nothing to do with the preparation of a balance-sheet [1].

Sub-s. (1). Notwithstanding regulations made by the Local Government under s. 248 with respect to the duties of the registrar, a shareholder is entitled to file a complaint against the directors for failure to comply with the provisions of this section [2].

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[1] Brahmanberia Loan Co. [1934] C. 624, 61 Cal. 408, 151 I.C. 693.

[2] Laxmi Narain v. Mahajan [1928] N. 186, 29 Cr. L. J. 581, 109 I. C. 597.

Meaning of "year."

"Year" means the calendar year 1 which commences on the 1st day of January 2; so it will be sufficient if the meeting is held before 31st December in any year, provided that it is within 15 months from the time when the last meeting was held 3.

Once in every year.

Sub-s. (1) demands that there shall be a general meeting held once at least in every year, *i.e.* one separate and distinct meeting every year. Where a meeting called and held on a day in one year is adjourned to a date in the next year, and held on that date, the meeting held on the latter date is not a different meeting and does not satisfy the requirements of this section 4.

What is a general meeting.

The section does not make a difference between a general meeting and an extraordinary general meeting; so where such a meeting is held within the 15 or 18 months, as the case may be, no offence is committed if the general meeting was not held within that period 5. But the Bombay High Court has held that an extraordinary general meeting held on the requisition of certain shareholders is not a general meeting within this section 6.

Power of general meeting.

A company in general meeting can do all acts save those delegated to the directors and other persons by the articles of association. Such acts are done by votes of the majority, as observed by Lord Hardwick: "Whenever a certain number are incorporated, a major part may do any corporate act; so if all are summoned and part appear, a major part of those that appear may do a corporate act though nothing be mentioned in the charter of the major part" 7. The assent of every member of the company will not be effective 8, unless the company is not one inviting or proposing to invite subscription from the public 9. But knowledge and acquiescence of all the members may condone a breach of trust committed by the directors 10. The presence of all the members at a meeting is sufficient to regularize any resolution passed whether there has or has not been due notice 11, where the act is not *ultra vires* of the company 12.

It has been held by the Madras High Court that where there is nothing in the articles of association to show that the general power of the shareholders at a meeting to cancel a decision of the directors is not possessed by the company, the failure to note forfeiture of shares as per resolution of the directors which was cancelled at a general meeting of the company cannot be treated as default 13. This raises the question, where the general or particular powers of the company are vested in the

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1. Park v. Lawton [1911] 1 K. B. 588; Gibson v. Barton [1875] L.R. 10 Q.B. 329, 32 L.T. 396; Edmunds v. Foster [1875] 33 L.T. 690. See also General Clauses Act, s. 3, cl. (59).
2. Gibson v. Barton [1875] L.R. 10 Q.B. 329.
3. Smedley v. Registrar of Companies [1919] 1 K.B. 97.
4. Sree Minakshi Mills Co. v. Asst. Registrar [1938] M. 640, [1938] M.L.J. 856.
5. Lachmi Narain v. Emp. [1919] 21 Cr. L.J. 94, 54 I.C. 494; see also Lord Claude Hamilton's case [1873] 8 Ch. App. 548.
6. Emp. v. Nasurbhai A. Lalji [1922] 25 Bom. L.R. 224, 24 Cr. L.J. 349, 72 I.C. 349.
7. Attorney-General v. Davy [1744] 2 Atk. 212; see also Merchants of the Staple v. Bank of England [1888] 21 Q.B.D. 160.
8. George Newman & Co. [1895] 1 Ch. 674.
9. A. G. for Canada v. Standard Trust Co. [1911] A.C. 498.
10. Per Romer L.J. in Innes & Co. [1903] 2 Ch. 254, at pp. 265-66.
11. Express Engineering Works [1920] 1 Ch. 466.
12. Baroness Wenlock v. River Dee Co. [1883] 36 Ch. D. 675n. at p. 681n.
13. Lakshmana v. Emp. [1932] M. 497, 35 M. W. N. 661.

directors by the articles, can the company in general meeting override such powers of the directors ? With all respect to the learned Judge it is submitted that the company cannot do it[1].

Resolution.

Where a general meeting is convened with notice to all the shareholders, but some of them do not choose to appear, they must be held to be bound by the resolutions passed by the majority[2]. Where a meeting is called as a meeting of directors, all the directors are present and they are the only shareholders in the company, the meeting is practically a meeting of shareholders at which resolution may be passed which would otherwise be invalid under the articles of association[3].

Rights of the minority.

A meeting of shareholders cannot by a majority refuse to hear the arguments of the minoriry ; but when such arguments have been heard, it is competent for the meeting to apply the closure, *i.e.*, to declare the discussion closed and put the motion to the vote[4].

Interference by Court.

On the well-known principle that the Court will not interfere with the internal management of companies, a very strong case must be made out to induce the Court to stop a general meeting of shareholders, especially on an interlocutory motion[5].

Proceedings of a general meeting.

The proceedings of a general meeting may be declared invalid unless such meeting has been properly convened, properly constituted and properly conducted[6]. See regs. 49 to 70 of Table A and notes thereto.

Adjournment.

In the absence of express authority in the articles, the directors have no power to postpone a general meeting properly convened[7]; but the chairman can on proper grounds adjourn the meeting[8]. An adjourned meeting is merely a continuation of the original meeting[9].

Where the articles provide that "the chairman with the consent of the meeting may adjourn it," he is not bound to adjourn, even though the majority desire the adjournment[10]. But he cannot, by leaving the chair before the business is completed, bring the meeting to a close ; and if he purports to do so, the meeting may elect another chairman and proceed with the business[11]. See regs. 52 and 54 of Table A and notes thereto.

Duties of the chairman.

It is the duty of the chairman to preserve order, to conduct proceedings of the meeting regularly and to take care that the sense of the meeting is ascertained with regard to any question before it.

Every member is entitled to notice of a general meeting[12]. If special business is to be transacted, the notice must specify its nature 1. A notice which stated that the object was to adopt new regulations, instead of Table A, but did not set out the contents of the new regulations, was held to be good 2. A notice which states that a certain resolution will be passed "with such amendments as shall be determined at the meeting" is a good notice 3. A notice however should show substantially what is proposed to be done, *e. g.*, a notice of a resolution to increase the capital should specify the amount of the proposed increase 4. What is sufficient notice of the general nature of the business proposed to be transacted must be determined from the particular circumstances of each case 1.

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[1] See Automatic S.C.F. Syndicate v. Cunninghame [1906] 2 Ch. 34 ; Quin & Axtens v. Salmon [1909] A.C. 442 ; Gramophone &c. Ltd. v. Stanley [1908] 2 K.B. 89.

[2] Pabna Dhana Bhander Co. v. Jagneswar [1933] 37 C. W. N. 909.

[3] Express Engineering Works (supra).

[4] Wall v. London & N. A. Corporation [1898] 2 Ch. 469 C. A.

[5] Amai Fakirji v. Pearson [1926] S. 295, 97 I. C. 84 following Last v. Buller & Co. [1919] 36 T. L. R. 35.

[6] Henderson v. Bank of Australasia [1890] 45 Ch. D. 330 at p. 346.

[7] Smith v. Paringa Mines Ltd. [1906] 2 Ch. 193.

[8] Queen v. Wimbledon Local Board [1882] 8 Q.B.D. 459.

[9] Mc Laren v. Thompson [1917] 2 Ch. 261 ; Spencer v. Kennedy [1926] Ch. 125.

[10] Salisbury Gold Mining Co. v. Hathorn [1897] A.C. 268 ; Parshuram v. Tata Industrial Bank [1923] 47 Bom. 915.

[11] National Dwellings Society v. Sykes [1894] 3 Ch. 159.

[12] Smyth v. Darley [1849] 2 H. L. C. 789 ; Tiessen v. Henderson [1899] 1 Ch. 861.

Notice of general meeting.

As a general rule, the notice of a general meeting should contain clear information as to what is proposed to be done; for an insufficient notice may invalidate the whole proceeding 5. The terms of any specific resolution to be proposed need not be set out in the notice, unless an extraordinary or special resolution is intended to be passed 6. But if something is kept back concealed, it will invalidate the proceedings 7. Thus a notice to adopt new articles of association which might be seen at the company's office, is not sufficient where the new articles increase the directors' remuneration and borrowing power and make other important changes 8. See reg. 49 of Table A and notes thereto.

If notice to propose a director is required to be given so many days before the day of election, and the election takes place at an adjourned meeting, the notice is sufficient if given at the specified time before the date of the adjourned meeting 9.

Where notice of a meeting has been duly given, it cannot be postponed by a subsequent notice 10. A notice to be good must be given by a person having authority to summon the meeting. A resolution passed at a meeting convened by the secretary without the authority of the board is invalid. In such a case the consent of the directors separately given will not cure the defect 11.

Notwithstanding a declaration by the chairman, the notice of the meeting may be looked at to see if the resolution is in order 12.

Effect of acquiescence of a member.

A company is not "corporately assembled" unless all the members attend, or at any rate they have got notice of the meeting. But a member who is in fact present and has acquiesced in the resolution for a long time, cannot subsequently complain of any irregularity in summoning the meeting 13.

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1. Tiessen v. Henderson (supra).
2. Young v. South African Syndicate [1896] 2 Ch. 268.
3. Betts & Co. v. Macnaghten [1910] 1 Ch. 430. In this case the Court looked at the notice as part of the *res gestæ* to see if the proceedings were regular.
4. Mac Connel v. E. Prill & Co. [1916] 2 Ch. 57.
5. Tiessen v. Henderson (supra); Normandy v. Ind, Coope & Co. [1908] 1 Ch. 84; Baillie v. Oriental Telephone Co. [1915] 1 Ch. 503.
6. Betts & Co. v. Macnaghten (supra).
7. Kaye v. Croydon Tramways Co. [1898] 1 Ch. 358; Ladies' Imperial Club [1920] 2 K. B. 523; in this case it was held that the omission to summon the absent member of a committee who had previously intimated her inability to attend, invalidated the proceedings of the committee.
8. Normandy v. Ind, Coope & Co. (supra): see also Pacific Coast Coal Mines v. Arbuthnot [1917] A. C. 607; Clarkson v. Davies [1923] A. C. 100; Baillie v. Oriental Telephone Co. (supra).
9. Mc Laren v. Thompson (supra); Spencer v. Kennedy (supra).
10. Smith v. Paringa Mines Ltd. (supra).
11. Haycraft Gold Reduction Co. [1900] 2 Ch. 230; State of Wyoming Syndicate [1901] 2 Ch. 431.
12. Mac Connell v. E. Prill & Co. (supra).
13. British Sugar Refining Co. [1857] 3 K. & J. 408.

Amendments. Where the notice is of a resolution to appoint as directors three persons named in the notice, three other names may be added by way of amendment 1. If the chairman improperly refuses to submit an amendment to the meeting, the resolution actually carried will be invalidated 2.

Resolutions. Each resolution must, if any member so requires, be put separately to the meeting 3. The poll must also be taken separately 4.

Right to vote. A right to vote is property, and the Court will interfere to protect a member from being deprived of this right 5. Where an agreement for sale of shares has been made or shares are mortgaged, but the vendor's or mortgagor's name remains on the register of members, he alone can vote; but he must do so in accordance with the directions of those entitled to the beneficial interest in the shares 6.

A provision in the articles that holders of any class of shares shall not have votes in respect of those shares is good, and resolutions passed by those having votes are binding even where they affect the interests of all classes 7. But one class of shareholders may not vote away the rights of another class 8.

Proxy. A shareholder must be present in person or by proxy before he can vote; but proxies cannot be used on a show of hands 9. This principle is not overridden by a provision in the articles that if a poll is demanded it shall be taken in such manner and at such time and place as the chairman of the meeting directs 10.

Stamp on proxy paper. When properly stamped, a proxy to vote at any ordinary or extraordinary general meeting is valid 11. An adhesive stamp must be cancelled by having the signature of the shareholder written across it or by being otherwise obliterated 12. The Central Government has reduced to 2 as. the duty chargeable under the Stamp Act, 1899 on a proxy empowering policy-holders of an insurance company to vote at a meeting of the policy-holders to be held for the election of directors. *Vide* Gazette of India dated 13th September, 1941, Part I, p. 1298. For stamp on proxy paper generally see Appendix—"Stamp Duty."

As to the quorum of a general meeting, see reg. 51, Table A and notes thereto.

Speeches at the meeting. On the ground that members have a common interest in the affairs of the company, speeches at a meeting and circulars sent by directors or shareholders to the members are privileged, and in the absence of malice will not support an action for libel 13. But newspapers making a report of what passes at a meeting have not a similar privilege, nor may directors or shareholders

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1. Betts & Co. v. Macnaghten (supra).
2. Henderson v. Bank of Australasia [1890] 45 Ch. D. 330.
3. Thomson v. Henderson's T. Estates [1908] 1 Ch. 765 at p. 776.
4. Blair Open Hearth Furnace Co. v. Reigart [1913] 108 L.T. 665, 29 T.L.R. 449; Patent Wood Keg Syndicate v. Pearse [1906] W.N. 164, 50 S.J. 650.
5. Pender v. Lushington [1877] 6 Ch. D. 70; Osborne v. Amalgamated Society of Ry. Servants [1911] 1 Ch. 540.
6. Wise v. Lansdell [1921] 1 Ch. 420; Puddephatt v. Leith [1916] 1 Ch. 200.
7. Mackenzie & Co. [1916] 2 Ch. 450.
8. James v. Buena Ventura &c. Syndicate [1896] 1 Ch. 456; Cook v. Deeks [1916] 1 A.C. 554.
9. Ernest v. Loma Gold Mines [1897] 1 Ch. 1.
10. Mc Millan v. Le Roy Mining Co. [1906] 1 Ch. 331.
11. Isaacs v. Chapman [1915] W. N. 413, affirmed in [1916] W. N. 28.
12. Mc Mullen v. "Sir A. Hickman" Steamship Co. [1902] 71 L.J. Ch. 766, 18 T. L. R. 650; S. 12, Indian Stamp Act II of 1899.
13. Lawless v. Anglo-Egyptian &c. Co. [1869] L. R. 4 Q. B. 262; Quartz Hill &c. Co. v. Beall [1882] 20 Ch. D. 501 at p. 508.

publish to the world defamatory statements, even though contained in the report of a meeting 1.

Sub-s. (2). Under the corresponding section, *i.e.*, s. 74 of Act VI of 1882, the penalty of the default in holding the general meeting was a fixed fine of Rs. 1,000, and the Court could not impose a lesser fine when the offence was proved 2. This has been set right in the present section. In a case where there was no general meeting of the company during the year, before the managing director can be convicted under s. 32, *ante*, it must be found that he was responsible for the default in respect of the holding of the general meeting, even assuming that he cannot plead the impossibility of complying with s. 32 caused by the non-holding of the general meeting if the impossibility was due to his own default 3. Even if the accused has already been convicted under the present section for default in connection with holding of the general meeting, there must be an independent finding of the default in the prosecution under s. 32, *ante*, 3.

See notes to sub-s. (5) of s. 32 *ante*, and to those to sub-s. (4) of s. 134 *post*.

When the registrar condones the delay in holding a general meeting, the delay in filing a balance sheet before the general body of this meeting must also be deemed to have been condoned 4.

Sub-s. (3). In dismissing an application for an order directing the calling of a general meeting, Buckland J. observed that the section was not intended to enable the Court to make an order which would excuse persons responsible for failure to call a general meeting from the consequences of their omission 5.

As to general meetings generally, see notes to ss. 77, 78, 79, 81 and regs. 45 to 70 of Table A.

Statutory meeting of company.

77. (1) *Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.*

(2) *The directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as the statutory report) certified as required by this section to every member of the company.*

(3) *The statutory report shall be certified by not less than two directors of the company or by the chairman of the directors if authorised in this behalf by the directors and shall state—*

(*a*) *the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;*

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1. Davison v. Duncan [1857] 7 E. & B. 229 ; Purcell v. Sowler [1877] 2 C.P.D. 215.
2. Emp. v. Lala Harkishenlal [1914] 15 Cr. L. J. 260, 23 I.C. 468.
3. Surendra v. Emp. [1941] 45 C. W. N. 1130.
4. In re Ramanujam [1941] M. 504, [1941] 1 M.L.J. 419, [1941] M. W. N. 225.
5. Brahmanberia Loan Co. [1934] C. 624, 61 Cal. 408, 151 I. C. 693.

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid ;

(c) an abstract of the receipts of the company and of the payments made thereout up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company showing separately any commission or discount paid on the issue or sale of shares ;

(d) the names, addresses and descriptions of the directors, auditors, managing agents and managers, if any, and secretary of the company and the changes, if any, which have occurred since the date of the incorporation ;

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification ;

(f) the extent to which underwriting contracts, if any, have been carried out ;

(g) the arrears, if any, due on calls from directors, managing agents and managers ; and

(h) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, managing agent or manager or a partner of the managing agent if the managing agent is a firm or if the managing agent is a private company a director thereof.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares and to the receipts and payments of the company, be certified as correct by the auditors of the company.

(5) The directors shall cause a copy of the statutory report certified as required by this section to be delivered to the registrar for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice

has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding five hundred rupees.

(11) This section shall not apply to a private company.

Amendment.

By the Companies (Amendment) Act, 1936 this section has been substituted for the original s. 77. It follows generally the lines of s. 113 of the English Act of 1929. It extends the obligation to hold a statutory general meeting to all companies, other than private companies, having a share capital. In sub-s. (1) "not less than one month" has been added. In sub-s. (2) "twenty-one days" has been substituted for "ten days." In sub-s. (3) further requirements have been added by clauses (f), (g) and (h) and in cl. (d) the managing agents have been included. Provision has also been introduced authorising certification of the statutory report by the chairman of the directors. Under the old section the private companies were exempted only from forwarding and filing the statutory report with the registrar; but under the new section the exemption is extended to all the provisions of this section. The original section 77 was in the these terms:—

Statutory meeting of company.

77. (1) Every company limited by shares and registered after the commencement of this Act shall, within a period of six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2) The directors shall, at least ten days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company or, where there are less than two directors, by the sole director and shall state—

(*a*) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted distinguished as aforesaid;

(c) an abstract of the receipts of the company whether from its share capital or from debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company;

(*d*) the names, addresses and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company;

(*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company.

(6) Every director of the company who knowingly and wilfully authorises or permits a default in complying with the provisions of sub-section (2) or sub-section (5) shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(7) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(8) The members of the company present at the meeting shall be at liberty to discuss any matters relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(9) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(10) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(11) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

The notice convening the meeting should state that it is to be the "statutory meeting [1].

For the circumstances under which a compulsory winding up order may be passed for failing to file the statutory report with the registrar, see the case noted below [2] and s. 162 cl. (ii).

Sub-s. (10). See notes to sub-s. (5) of s. 32 *ante*.

Calling of extraordinary general meeting on requisition.

78. (1) Notwithstanding anything in the articles, the directors of a company which has a share capital shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

(4) Any meeting called under this section by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

(5) *Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.*

Amendment.

By the Companies (Amendment) Act, 1936, sub-s. (4) of the original section has been omitted, sub-s. (5) has been re-numbered as sub-s. (4) and the new sub-s. (5) has been added. The reason for omission of sub-s. (4) is that under the new definition a special resolution [*vide* s. 81 (2)] is not required to be confirmed at another meeting. The new sub-s (5) reproduces cl. (5) of s. 114 of the English Act of 1929. It provides for compensation to the requisitionists and a penalty for refusing to hold the meeting. The old sub-s. (4) ran as follows :

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[1] Gardner v. Iredale [1912] 1 Ch. 700.

[2] Kent Outcrop Coal Co. [1912] W. N. 26.

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith call a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution and, if the directors do not call the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves call the meeting.

"Articles."

It is very doubtful if a meeting which is valid under this section can be invalidated by an article 1. But there is nothing in the Act which requires that the articles must be rigid and may not provide for varying sets of circumstances 1.

Meaning of "requisition", and signing it.

The word "requisition" in sub-s. (2) means requisition signed by the holders of not less than one-tenth of the issued capital for the time being. The one-tenth referred to is that part of the issued share capital upon which all calls &c. have been paid, and not one-tenth of the issued share capital the holders of which one-tenth have paid all calls &c. 2.

The requisition in the case of joint holders of shares must be signed by all the holders 3. It seems that the preference shareholders may join in demanding a meeting, although they may not be entitled to vote at the meeting 3.

Date of requisition.

In case of calling a meeting on requisition, there is no presumption in law that the requisition is received on the date it bears 1.

What is "like from."

A number of resolutions in the following form were deposited at the registered office of a company : "We the undersigned hereby request you to call an extraordinary general meeting of the shareholders for the purpose of considering the reconstruction of the board and resolutions concerning the directorate and officers of the company." Other requisitions were deposited in the same form except that at the end there were added the words "in addition to the affairs of the company in general." It was held that these requisitions were in "like form" and that they sufficiently stated the objects for which the requisitionists desired to have the meeting called 2.

Secretary's power.

The secretary however cannot, on receipt of the requisition, summon a meeting without the sanction of the board 4.

If the directors convene a meeting to consider part only of the specified matters, the requisitionists may ignore it and call their own meeting 5.

Directors' duties and rights.

The directors have a duty as well as a right to circularize the members for the purpose of advising them as to the wisdom of any proposed resolution and may use the company's money for this purpose or for procuring proxies in their own favour 6.

Notice.

The notice of an extraordinary general meeting must disclose all facts necessary to enable the shareholder to determine whether he should attend the meeting, and the pecuniary interest of a director in a special resolution to be

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1. Topandas v. Yeotmal Electric Supply Co., infra.
2. Fruit & V. G. Association v. Kekewich [1912] 2 Ch. 52 at p. 58.
3. Patent Wood Keg Syndicate v. Pearse [1906] W. N. 164, 50 S. J. 650.
4. State of Wyoming Syndicate [1901] 2 Ch. 431.
5. Isle of Wight Ry. Co. v. Tahourdin [1883] 25 Ch. D. 320.
6. Peel v. London & N. W. Railway [1907] 1 Ch. 5 ; Campbell v. Australian Mutual Provident Society [1908] 77 L. J. (P. C.) 117, 24 T. L. R. 623.

proposed at the meeting is a material fact for this purpose 1. It cannot however be held that unless the notice of the meeting recites all the facts necessary to meet every technical objection which may be raised to its validity, the meeting held in pursuance of such notice must be invalid 2.

Sub-s. (4). See notes to s. 76.

For other cases see notes to reg. 48, Table A.

As to general meetings generally, see ss. 76, 77, 79 and 81 and regs. 45 to 70 of Table A.

79. (1) *The following provisions shall have effect with respect to meetings of a company other than a private company not being a subsidiary of a public company and the procedure thereat, notwithstanding any provision made in the articles of the company in this behalf :—*

Provisions as to meetings and votes.

(a) a meeting of a company other than a meeting for the passing of a special resolution may be called by not less than fourteen days' notice in writing ; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit ;

(b) notice of the meeting of a company with a statement of the business to be transacted at the meeting shall be served on every member in the manner in which notices are required to be served by Table A and for the purpose of this clause the expression 'Table A' means that table as for the time being in force ; but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting ;

(c) five members present in person or by proxy, or the chairman of the meeting, or any member or members holding not less than one-tenth of the issued capital which carries voting rights shall be entitled to demand a poll : Provided that in the case of a private company if not more than seven members are personally present, one member, and if more than seven members are personally present, two members shall be entitled to demand a poll ;

(d) an instrument appointing a proxy, if in the form set out in regulation 67 of Table A, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles ; and

(e) any shareholder whose name is entered in the register of shareholders of the company shall enjoy the same rights and be subject to the same liabilities as all other shareholders of the same class.

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1. Tiessen v. Henderson [1899] 1 Ch. 861.
2. Topandas v. Yeotmal Electric Supply Co. [1940] S. 87, 190 I. C. 551.

(2) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf :—

(a) two or more members holding not less than one-tenth of the total share capital paid up or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting ;

(b) in the case of a private company two members and in the case of any other company five members personally present shall be a quorum ;

(c) any member elected by the members present at a meeting may be chairman thereof ;

(d) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each hundred rupees of stock held by him, and in any other case every member shall have one vote ;

(e) on a poll votes may be given either personally or by proxy ;

(f) the instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under seal or under the hand of an officer or an attorney duly authorised ; and

(g) a proxy must be a member of the company.

(3) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is given may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called , held and conducted.

This section has been substituted for the original s. 79 by the Companies (Amendment) Act, 1936. It is based on s. 115 of the English Act of the 1929, but whereas that section allows its provisions being overridden by the articles, the section here makes the provisions of sub-s. (1) incapable of variation. For effect of this new section see Introduction. The old s. 79 was in these terms :

Provisions as to meetings and votes.

79. In default of, and subject to, any regulations in the articles,—

(i) a meeting of a company may be called by fourteen days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the First Schedule ;

(*ii*) five members may call a meeting ;
(*iii*) any person elected by the members present at a meeting may be chairman thereof ; and
(*iv*) every member shall have one vote.

Meaning of "fourteen days."

Sub-s. (1). "Fourteen days" means fourteen clear days between the day on which the members would receive the notice in ordinary course of post and the day of the meeting [1].

Insufficiency of notice.

When the notice convening a meeting is insufficient, the business, in the absence of a special provision in the articles, cannot be validly transacted, and the directors elected at the meeting are not directors [2]. A shareholder who by his conduct shows that he knew the real effect of or work to be transacted at a meeting, cannot complain of the notice on the ground of insufficiency [3].

What the notice should contain.

Special notice should be given of a resolution involving pecuniary advantage to a director [4]. A notice omitting to state the particulars of the advantage is insufficient and the consequent resolutions are bad [5]. But in the case noted below Cotton L. J. observed : "I do not think that the notice calling a meeting ought to be treated very critically inorder to see whether we cannot pick out some defect in it" [6].

As to notices generally, see notes to s. 76 and reg. 49 of Table A.

For the manner in which notices are required to be served see regs. 112 to 116 of Table A.

Effect of irregularity in procedure.

Irregularity in the procedure at a meeting of shareholders is not a matter for interference by the Court, but for a majority of shareholders to deal with [7]. A Court will interfere only if the rights of the shareholders are infringed or if a case of fraud or *ultra vires* action is made out [8].

Shareholders' right to speak.

A shareholder is not entitled to speak at a meeting as much as he pleases, but has a right to be heard in reasonable terms for a reasonable time [8]. As to whether the denial of this right vitiates the resolution, the proper test is to consider the facts and circumstances of each case [9].

Point of order.

A point of order which is a request to the chairman to hold that the meeting is not competent to consider and confirm an arrangement contained in the resolution and which is long enough to form a decent speech against the resolution is properly rejected as a point of order, as it is for the shareholders to consider whether to accept or reject the resolution [8].

Amendments can be allowed ; but it must depend upon the nature of the resolution and the nature of the amendment, whether it could be or should be allowed by the chairman 1. Any proper amendment should be put to the meeting for consideration, and if the chairman rules out any such amendment, the resolution is liable to be set aside 2. But if an amendment, though in form an amendment, is really a counter proposal of a different nature involving either adjournment of the consideration of the resolution or rejection thereof or goes beyond the scope of the subject matter of the resolution, it should be ruled out 2.

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[1] Railway Sleepers Supply Co. [1885] 29 Ch. D. 204.
[2] Garden Gully &c. Mining Co. v. Mc Lister [1875] 1 App. Cas. 39.
[3] Parashuram v. Tata Bank [1928] B. 180 P.C., 55 I. A. 274, 52 Bom. 71.
[4] Hutton v. West Cork Rail. Co. [1883] 23 Ch. D. 654 C.A.
[5] Normandy v. Ind, Coope & Co. [1908] 1 Ch. 84.
[6] Henderson v. Bank of Australasia [1890] 45 Ch. D. 330 at p. 343.
[7] Tanjore Permanent Fund Ltd. v. Sadasiva [1926] M.W.N. 429, 50 M.L.J. 479, [1926] M. 705 following Oxted Motor Co. [1921] 3 K.B. 32 ; Express Engineering Works [1920] 1 Ch. 466 and Mac Dougal v. Gardinar [1875] 1 Ch. D. 13.
[8] Parashuram v. Tata Industrial Bank [1923] 47 Bom. 915, 25 Bom. L. R. 1083.
[9] Parashuram v. Tata Industrial Bank [1925] 26 Bom. L.R. 987, [1925] B. 49.

Amendments.

Under sub-s. (2), cl. (d) every member of a company originally having a share capital shall have one vote in respect of each share or each Rs. 100 stock held by him. But under reg. 60 of Table A on a show of hands every member present in person shall have one vote.

Votes.

A point of order objecting to the validity of votes tendered for a resolution must be handed to the chairman before he commences to take the poll ; also it should be directed to the particular votes. It is futile for any member to raise a general objection without indicating the nature of the objection and without any attempt to particularize the votes objected to 2. The chairman may close the doors during the taking of the poll, if it is advisable under the circumstances of the case 1.

Objections.

When the plaintiff disputes the validity of votes recorded at a meeting, he is entitled to inspection of the documents concerned. But when such inspection will cause delay and when the plaintiff cannot show that the inspection would yield any result in his favour, refusal of inspection is not wrong so far as to merit reversal by the superior Court 2. For other cases relating to general meeting see notes to s. 76.

A general meeting can be called either by the directors in accordance with the provision of the articles of association, or by the shareholders on requisition, also in accordance with the articles. There is only one other way, viz., by a direction of the Court. Meeting called or held in any other way are not meetings of the company 3.

Meeting—how called.

80. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

Representation of companies at meetings of other companies of which they are members.

A person appointed under this section as a representative can be taken into account in considering whether or not there is a quorum of shareholders present 4. A vote given by such a representative can be properly admitted by the chairman of the meeting on the evidence afforded by a copy of the authorizing resolution 5.

Rights of a representative.

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1. Rebello v. Co-operative &c. Trading Co. [1925] B. 105, 26 Bom. L.R. 907.
2. Parashuram v. Tata Industrial Bank [1923] 47 Bom. 915, 25 Bom. L.R. 1083.
3. Kailash v. Sadar Munsiff [1925] C. 817, 52 Cal. 513.
4. Colonial Gold Reef v. Free State Rand [1914] 1 Ch. 382.
5. Kelantan Coco Nut Estates [1920] W.N. 274, 64 S. J. 700.

Does not apply to foreign companies. The power given by this section cannot be exercised by a foreign corporation [1]; for the word company means a company formed and registered under this Act or a previous Act of the Indian legislature [2].

Extraordinary and special resolutions.

81. (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) *A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been duly given :*

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which an extraordinary resolution *or a special resolution is submitted to be passed* a declaration of the chairman on a show of hands that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution *or a special resolution is submitted to be passed* a poll may be demanded. * * *

(5) In a case where, if a poll is demanded, it may in accordance with the articles be taken in such manner as the chairman may direct ; it may, if the chairman so directs, be taken at the meeting at which it is demanded.

(6) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by the articles of the company, *or under this Act.*

(7) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles, *or under this Act.*

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[1] Blair Open Hearth Furnace Co. v. Reigart [1913] 108 L. T. 665, 29 T.L.R. 449.

[2] See s. 2, sub-s. (1) clause (2) & (7).

Amendment.

By the Companies (Amendment) Act, 1936, the new sub-s. (2) has been substituted for the old one, in sub-ss. (3) and (4) for the words "is submitted to be passed or a special resolution is submitted to be passed or confirmed" after the words "extraordinary resolution," the words in italics have been substituted, in sub-s. (4) after the words "a poll may be demanded," the words "by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles" have been omitted, and at the end of sub-ss. (6) and (7) the words in italics have been added. These amendments are on the lines of s. 117 of the English Act of 1929. The new sub-s. (2) abolishes the necessity for the confirmation of a special resolution by a second general meeting, but requires 21 days' notice to be given of the meeting at which the special resolution is passed.

The old sub-s. (2) was as follows :

> (2) A resolution shall be a special resolution when it has been—
>
> (*a*) passed in manner required for the passing of an extraordinary resolution ; and
>
> (*b*) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

The alterations in sub-ss. (3) and (4) have been necessitated by the new definition of special resolution.

Where a special resolution is necessary.

A special resolution is necessary for the exercise of the following powers : to change the company's name [s. 11 sub-s. (4)] ; to change the place of its registered office from one province to another or alter its objects as stated in the memorandum of association (s. 12) ; to alter or add to its articles of association (s. 20) ; to reorganize its share capital (s. 54) ; to reduce the share capital in any way (s. 55 and s. 66) ; to turn an existing liability on shares into a reserve liability (s. 69) ; to alter the memorandum of association so as to make the liability of the directors or of any director unlimited (s. 71) ; to assign office by a director (s. 86-B) ; to sanction additional remuneration of a managing agent (s. 87-C) ; to appoint inspectors to investigate the affairs of the company (s. 142) ; to initiate on its own account a winding up by the Court [s. 162. cl. (i)] ; to wind up voluntarily [s. 203, cl. (2)] ; to confer authority on the liquidator in a voluntary winding up to enter into any arrangement with a transferee company (s. 208-C) and to alter the form of constitution of a company registered under Part VIII by substituting a memorandum and articles for a deed of settlement (s. 267).

Taking powers to pass.

A company which had not the power by its articles to reduce its capital, could take the power by passing a special resolution and could exercise the power at the second meeting for confirming the resolution 1. But a confirmatory meeting is no longer necessary.

Where an extraordinary resolution is necessary.

An extraordinary resolution is necessary for the following purposes : to remove a director (s. 86-G.) ; to wind up voluntarily when the company cannot by reason of its liabilities continue its business [s. 203, sub-s. (3)] ; to sanction an arrangement between a company and its credirors (s. 215) and to sanction certain acts to be done by the liquidator in a voluntary winding up (s. 212).

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1. John Crossley & Sons [1892] W.N. 55.

Validity of special resolution.

A special resolution passed in conformity with the provisions of this section will be a valid one, even though the articles of the company contain further requirements which have not been complied with[1]. It should be remembered that under the old sub-s. (2) there must be an interval of not less than fourteen days and not more than one month between the two meetings[2], that a quorum was essential[3]. The voting is in the first instance by a show of hands[4], proxies are only to be counted on a poll[5]. Under the old sub-s. (2) at the second meeting no amendment could be put[6]. "Fourteen-days" meant fourteen clear days[2].

Under the new sub-s. (2) the period of "not less than twenty-one days' notice" means a period of not less than 21 clear days, exclusive of the day of service of the notice and exclusive of the day on which the meeting is to be held[7].

Where a confirmatory meeting was convened for a date within the prescribed period and being duly held was adjourned to a date beyond the prescribed period, a confirmation at such an adjourned meeting was held to be valid on the ground that the adjourned meeting was a continuation of the original meeting[8].

A meeting summoned to confirm a special resolution to wind up might appoint a different liquidator from the one named in the notice[9]. It was not necessary that the resolution at the first meeting should follow the exact terms of the notice[10].

Votes, how taken.

Unless a poll is demanded, the vote is by show of hands, and on such a show the hands are to be counted and not the votes conferred by the shares represented[11]. The ruling of the chairman that a resolution has been passed by show of hands cannot be challenged, if not challenged at the time[12]. But if the chairman's declaration itself contains intrinsic evidence that it is wrong, as for instance, where the chairman states that he has taken proxies into account no poll having been demanded, it will not be conclusive[13]. It has been held in England that the declaration of the chairman under s. 51 of the Act of 1862[14], that the special resolution has, on a show of hands, been carried is not conclusive evidence of the fact so as to preclude a shareholder from disputing the validity of the resolution by legal proceedings on the ground, for instance, that it has not been carried by the statutory majority[15]. For the number of members who can demand a poll see the new s. 79, (1) (c).

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[1] Etheridge v. Central Uruguay Ry. Co. [1913] 1 Ch. 425.

[2] Railway Sleepers Supply Co. [1885] 29 Ch. D. 204 ; Indian Trading & Co. [1911] 15 C.W.N. 1047.

[3] Cambrian Peat Co. [1875] 31 L.T. 773.

[4] Horbury Bridge &c. Co. [1879] 11 Ch. D. 109. The word majority in sub-s. (1) means numerical majority unless a poll is demanded ; *ibid.*

[5] Ernest v. Loma Gold Mines [1897] 1 Ch. 1.

[6] Wall v. London & N. A. Corporation [1898] 2 Ch. 469.

[7] Hector Whaling, Ltd. [1936] 1 Ch. 208.

[8] Mc Millan v. Le Roy Mining Co. [1906] 1 Ch. 331.

[9] Trench Tubeless Tyre Co. [1900] 1 Ch. 408, 16 T. L. R. 207 C A. ; Neuschild v. British Equatorial Oil Co. [1925] Ch. 346.

[10] Torbock v. Lord Westbury [1902] 2 Ch. 871.

[11] Ernest v. Loma Gold Mines [1897] 1 Ch. 1.

[12] Arnot v. United African Lands Ltd. [1901] 1 Ch. 518 C.A. ; Hadleigh Castle Gold Mines [1900] 2 Ch. 419, 422.

[13] Patent Wood Keg Syndicate v. Pearse [1906] W.N. 164, 50 S. J. 650.

[14] This corresponds to s. 69 of the Act of 1908, the only difference being that the words "as an extraordinary resolution" in the last but one line in sub-sec. (1) were not in the Act of 1862.

[15] Young v. South African &c. Syndicate [1896] 2 Ch. 268 ; Betts & Co. v. Mac Naghten [1910] 1 Ch. 430.

Apart from fraud the chairman's declaration is conclusive 1, unless in making it he states the figures for and against and they show that he erroneously declared the resolution as duly passed 2. The last noted case has been distinguished by Blackwell, J. who has held that the chairman's declaration on a show of hands is conclusive and the minutes of the meeting are not admissible to prove the contrary 3.

Rights of chairman at common law.

At common law, and where the taking of a poll is not governed by statute or special rule, the chairman is the proper authority to fix the time and place for the taking of a poll, and a poll is properly and correctly taken immediately after the termination of the meeting 4. The same rule applies to meetings of registered companies, unless the articles prescribe some other procedure. The object of a poll is to ascertain the true sense of the meeting, and it is not to give the absent members a further opportunity of voting, unless a contrary intention is expressly or impliedly to be gathered from the articles of association. There is no presumption for construing a doubtful article in the latter sense 5.

The chairman must not declare that the poll shall be taken in any way inconsistent with the articles, *e. g.*, by voting papers, because personal attendance of the voter or his proxy is necessary 6. When the poll is taken, each person voting signs a paper "for" or "against" the resolution and proxies are counted 7.

Demand for poll.

If after rightful demand of a poll the poll is not taken, the resolution becomes void 8. A poll is a mere enlargement of the meeting at which it is demanded 9. If there are several resolutions before the meeting, they must not be put *en bloc* : each resolution must be put separately 10.

Cl. (5) is not in the English Act.

Notice of meeting.

Where an extraordinary resolution is proposed to be passed, the notice of the general meeting must not merely indicate, but must actually specify, the intention to pass the resolution as an extraordinary resolution 11 ; and the exact resolution must be set out in the notice 12. But reasonable amendments within the scope of the notice are permissible.

In the case of a special resolution the notice must state that it will be a special resolution 13. The notice must give sufficiently full and frank disclosure of the facts and the effect of the resolution. If that is not done, the resolution is inoperative and not binding upon the company 14.

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1. Hadleigh Castle Gold Mines [1900] 2 Ch. 419, overruling in effect Young v. South African &c. Syndicate [1896] 2 Ch. 268.
2. Re Caratal (New) Mines [1902] 2 Ch. 498 ; but see E. D. Sassoon United Mills (infra).
3. E. D. Sassoon United Mills [1929] B. 38, 30 Bom. L. R. 598 ; also Arnot v. United African Lands Ltd. [1901] 1 Ch. 518.
4. Arnot v. United African Lands Ltd. [1901] 1 Ch. 518.
5. Liladhar v. Rehmubhoy [1891] 15 Bom. 164.
6. Mc Millan v. Le Roy Mining Co. [1906] 1 Ch. 331.
7. Topham's Company Law, 5th ed. p. 212.
8. Queen v. Cooper [1870] L. R. 5 Q. B. 457.
9. Queen v. Wimbledon Local Board [1882] 8 Q. B. D. 459.
10. Patent Wood Keg Syndicate v. Pearse (supra) ; Re Caratal (New) Mines (supra).
11. Mac Connel v. E. Prill and Co. [1916] 2 Ch. 7.
12. Ibid; distinguishing Penarth Pontoon &c Co. [1911] W.N. 240, 56 S. J. 124.
13. Penarth Pontoon &c. Co. (supra).
14. Narayanlal v. Maneckji Petit Manufacturing Co. [1931] B. 354, 33 Bom. L.R. 556, 133 I. C. 829. In this case Baker J. reviewed all relevant authorities.

So that the two meetings required for passing a special resolution under the old sub-s. (2) might be convened by one notice, the articles of many companies provided as follows:—"Whenever it is intended to pass a special resolution, the two meetings may be convened by one and the same notice and it shall be no objection that the notice only convenes the second meeting contingently on the resolution being passed by the requisite majority at the first meeting." In such a case one notice convening the two meetings was valid 1. But a conditional notice was bad 2. The notice might however state that the second meeting would be held in any case unless notice to the contrary was given 3.

Power to convene the two meetings by one notice.

A notice of two meetings to considar *seriatim* two alternative resolutions (one at each meeting) was not rendered invalid where there was an express provision that the second meeting would be held in the event of the first resolution not being passed at the first meeting 4.

At the first meeting amendments within the notice might be made, but the resolution confirmed at the second meeting must be in the same form as that passed at the first meeting 5. Clause (a) of old sub-section (2) referred only to the passing of the resolution, and not to the calling together of the meeting for the purpose of passing it 6.

Amendments.

It is competent for all shareholders acting together to waive the formalities required by this section as to notice of intention to propose a resolution as an extraordinary resolution 7. A company however cannot by an ordinary resolution or by conduct make good an invalid special resolution, nor is it an objection to an action by a single shareholder to say that the company ought to be plaintiff on the ground that it can ratify the resolution, for this is not the case 8.

Shareholders' right to waive notice.

Sub-s. (2). Where a meeting held for the purpose of confirming a special resolution was adjourned for *bona fide* reasons to a date more than a month from the date of the meeting at which the extraordinary resolution was passed and the resolution was confirmed at the adjourned meeting, it was a valid special resolution; for an adjourned meeting is a continuation of the previous meeting 9. The new sub-s. (2) came into force on 15th January, 1937. So where a meeting for passing a special resolution was called by 7 days' notice according to the articles of the company fixing a date before 15th January, 1937 but the meeting on objection by some shareholders was adjourned to a date after the 15th January, 1937, the question was whether the resolution passed was a valid special resolution. It was held by the Peshwar Court that it was. The first meeting was regularly called because 7 days' notice was all that was required before the amendment came into operation. The second

Adjournment of meeting.

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1. North of England Steamship Co. [1905] 2 Ch. 15 C. A.; Jenner Institute of P. Medicine [1899] 15 T. L. R. 394.
2. Alexander v. Simpson [1889] 43 Ch. D. 139. In this case the notice concluded thus: "Should such resolution be duly passed the same will be submitted for confirmation as a special resolution to a subsequent extraordinary general meeting which will be held on Monday the 22nd July at the same time and place."
3. Espuela Land & Cattle Co. [1900] W. N. 139.
4. Tiessen v. Henderson [1899] 1 Ch. 861.
5. Torbock v. Lord Westbury [1902] 2 Ch. 871.
6. Penarth Pontoon &c. Co. [1911] W. N. 240.
7. Oxted Motor Co. [1921] 3 K. B. 32.
8. Baillie v. Oriental Telephone Co. [1915] 1 Ch. 503.
9. Neuschild v. British Equatorial Oil Co. [1925] Ch. 346.

meeting was clearly a continuation of the first meeting which was adjourned. The fact that the section was amended in the meantime had no effect on the second meeting so far as the procedure for convening it was concerned. The resolution passed at that meeting was therefore in order. But as the old section was no longer law when the second meeting was held, the decision passed at that meeting became final and no further confirmatory meeting was necessary 1.

Notice by advertisement. In the case of notice by advertisement, the date on which the advertisement appears is the date from which the days are to be counted 2. The date on which the notice is given is excluded 3.

Chairman's declaration. Sub-s. (3). The conclusiveness of the declaration of the chairman contemplated by this sub-section attaches to the declaration where the chairman does not find by his declaration the figures for or against the resolution. But where he finds the figures and erromeously in point of law holds that the resolution has been duly passed, the resolution cannot be held to have been passed according to law 4.

Show of hands. In such meetings the declaration by the chairman of the result of a show of hands is an essential preliminary basis for all subsequent procedure including the demand for and the taking of the poll 5. In the last cited case Lord Blanesburgh observed : "It is true that the chairman at the deferred shareholders' meeting said that only deferred shareholders were to hold up their hands. No one however can say, the chairman perhaps least of all, whether all of the shareholders present, not being deferred shareholders, were obedient to his command.........A show of hands is the constitutional method of declaring the will of a meeting. It stands as the resolution of the meeting, unless the declaration of the chairman that the proposed resolution is thereby carried or lost is subsequently displaced by the result of a poll thereafter duly demanded and taken. But from the very nature of the case there can, I suggest, be no valid demand for a poll unless there has been a valid show of hands."

Section is self-contained. Save and except in the matter of notice as stated in sub-s. (7), this section seems to be self-contained as regards proceedings of the general meetings, and independent of any regulations in the Table A or other articles of association, but is subject to the provisions of the new s. 79. For the provisions for notice of meeting see the new s. 79 (1) (a) and (b).

As to general meetings generally, see notes to ss. 76, 77 and 79 and regs. 45 to 70 of Table A.

Registration and copies of special and extraordinary resolutions. 82. (1) A copy of every special and extraordinary resolution shall, within fifteen days from *the passing thereof* be printed or type-written *and duly certified under the signature of an officer of the company* and filed with the registrar who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be

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1. Khattar Electrical Engineering &c. Co. [1938] Pesh. 41.
2. Mercantile Investment Co. [1893] 1 Ch. 484 n., 489 n.
3. See Goldsmith's Co. v. West Metropolitan Ry. [1904] 1 K. B. I.
4. Dhakeswari Cotton Mills v. Nilkamal [1937] C. 645, 41 C. W. N. 1137.
5. Carruth v. Imperial Chemical Industries [1937] A. C. 707 (755).

embodied in or annexed to every copy of the articles issued after the date of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one rupee or such less sum as the company may direct.

(4) If a company makes default in so filing with the registrar a copy of a special or extraordinary resolution, it shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(6) Every officer of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Amendment.

By the Companies (Amendment) Act, 1936, in sub-s. (1) for the words, "the confirmation of the special resolution or the passing of the extraordinary resolution, as the case may be" after the words "fifteen days from" the words "the passing thereof" have been substituted, and after the word "typewritten" the words in italics have been inserted.

Registrar's powers.

In registering the alteration of articles under this section the registrar has a discretion similar to that which he has under s. 22 in registering the memorandum and articles of association. So where a company by altering its articles of association proposes to carry on a business which amounts to a lottery, the registrar can refuse to register such alteration. It is better to stop it at the threshold rather than to allow it to proceed on the lines and then wind it up as an illegal company after several persons have put their money into the scheme 1.

Minutes of proceedings of general meetings and of its directors.

83. (1) Every company shall cause minutes of all proceedings of general meetings and of its directors to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to

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1. Pioneer M. B. & F. Society v. Asst. Registrar [1933] M. 129, 141 I. C. 177.

have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

(4) *The books containing the minutes of proceedings of any general meeting of a company held after the commencement of the Indian Companies (Amendment) Act, 1936, shall be kept at the registered office of the company and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.*

(5) *Any member shall at any time after seven days from the meeting be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any minutes referred to in sub-section* (4) *at a charge not exceeding six annas for every hundred words.*

(6) *If any inspection required under sub-section* (4) *of this section is refused or if any copy required under sub-section* (5) *of this section is not furnished within the time specified in sub-section* (5) *the company and every officer of the company who is knowingly and wilfully in default shall be liable in respect of each offence to a fine not exceeding twenty-five rupees and to* [*a further fine not exceeding twenty-five rupees*] *for every day during which the default continues.*

(7) *In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.*

Sub-ss. (4) to (7) have been added by the Companies (Amendment) Act, 1936. They reproduce the provisions of s. 121 of the English Act of 1929. As to their effect see Introduction. In sub-s. (6) the words within square brackets have been substituted for the words "a further fine to twenty-five rupees" by the Repealing and Amending Act XXXIV of 1939 which received the assent of the Governor-General on 28th September, 1939.

Amendment.

The new sub-s. (4) provides that the minutes of proceedings of general meetings held after the commencement of the Amending Act of 1936, i.e., 15th January, 1937 must be kept at the registered office of the company and shall be open to inspection of any member without charge. The new sub-s. (5) gives the members a right to obtain copies of such minutes on payment of the charges mentioned therein. The new sub-s. (6) lays down the consequences of refusal or default by the company, and the new sub-s. (7) gives the aggrieved member a right to apply to the Court for an injunction to comply with the requirements of sub-ss. (4) and (5).

As to the right of inspection under the common law and the right to take copies of the minutes, see *Rameswar v. Calcutta Wheat & Seed Assn.* 1, and notes to regulation 105 of Table A *post.*

Minutes.

"Directors ought", as observed by Kekewich J., "to place on record either in formal minutes or otherwise the purport and effect of their deliberations and conclusions; and if they do this insufficiently or inaccurately they cannot reasonably complain of inferences different from those which they allege to be right" 2.

Entries made in a number of loose leaves fastened together in two covers are not admissible in evidence as minutes within the meaning of this section. In such a physical condition at any moment, if any one wishes to do so, he can take any number of leaves out and substitute any number of other leaves. It is a thing with which any one disposed to be dishonest can easily tamper. Further, it is not a book within the meaning of the section 3.

It is usual to "confirm" the minutes of the previous board meeting. The word "confirm" sometimes means merely to verify. It is commonly used in that sense at the meetings of public bodies which confirm the minutes of the last meeting, not meaning thereby that they have given them force but merely that they declare them to be accurate 4.

The adoption of the minutes at a subsequent meeting of directors does not make those taking part in such adoption responsible for the acts done at the earlier meeting 5.

After the chairman has signed the minutes, they cannot be altered 6.

The minutes of a meeting are not the exclusive evidence of what took place at the meeting, and an unrecorded resolution may be proved *aliunde* 7. If the books of a company show the record of a transaction, *e.g.*, forfeiture of shares, the Court will presume that such a resolution has been passed 8. The minutes are however *prima facie* evidence of what happened at the meeting 9. Courts will incline more in favour of validity of the proceedings, if facts invalidating the proceedings are not established beyond doubt 9. A case of fraud or overbearing influence is necessary for interference by the Court 10.

The minutes, to be valid, must be made within a reasonable time 11. The directors cannot make any disposition of the minute-book which is inconsistent with the articles 12.

Resolution.

The articles of association often provide that a letter signed by all the directors shall have the same effect as a resolution of the board. In the absence of such a provision, the directors cannot act without a meeting 13.

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1. [1938] C. 89, 42 C.W.N. 161.
2. Liverpool Household Stores Assn. [1890] 59 L. J. (Ch.) 616, 62 L.T. 873, 875.
3. Hearts of Oak Assurance Co. v. Fowler [1936] 1 Ch. 76.
4. Queen v. Mayor of York [1853] I. E. & B. 588, 594.
5. Burton v. Bevan [1908] 2 Ch. 240; Lucas v. Fitzgerald [1905] 20 T.L.R. 16.
6. Cawley & Co. [1889] 42 Ch. D. 309.
7. Knight's case [1867] 2 Ch. App. 321; Fireproof Doors Ltd. [1916] 2 Ch. 142; Foster v. Foster [1916] 1 Ch. 532.
8. Knight's case (supra).
9. Rebello v. Co-operative &c. Co. [1924] 26 Bom. L.R. 907.
10. Parasuram v. Tata Industrial Bank [1924] 26 Bom. L.R. 987.
11. Toms v. Cinema Trust Co. [1915] W.N. 29.
12. Capital Fire Insurance Assn. [1883] 24 Ch. D. 408, 414.
13. D' Arcy v. Tamar Hill Kit Ry. Co. [1867] 2 Ex. 158; Haycraft Gold Reduction Co. [1900] 2 Ch. 230; but see Southern C.D. Bank v. Rider [1895] 73 L.T. 374 and Collie's Claim [1871] 12 Eq. 246, 258.

Position and duties of secretary.

It is usually the duty of the secretary to prepare the minutes of the proceedings of the general as well as the directors' meetings. He may be regarded as a servant of the company[1]. It was at one time thought that a master was not liable for the wrong of his servant or agent, if it was not committed for the master's benefit[12]; but it has afterwards been held by the House of Lords that the language of Willes J. in *Barwick* v. *English Joint Stock Bank*[2] has been misunderstood ; the true principle is, their Lordships declare, that a principal is liable for the acts of his agent acting within the scope of his authority, whether the fraud is committed for the benefit of the principal or for the benefit of the agent[3]. "If the agent," as observed by Lord Loreburn L. C., "commits the fraud purporting to act in the course of business such as he was authorized, or held out as authorized, to transact on account of his principal, then the latter may be held liable for it. And if the whole judgment of Willes J., be looked at instead of one sentence alone, he does not say otherwise"[4]. The general rule and the reason therefor were however correctly laid down by Willes J., in the above case : "The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, though no express command or privity of the master be proved...It is true he has not authorized the particular act, but he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in"[5]. But where a secretary forged the signature of directors to a cheque which was paid by the bank, the company was held entitled to repudiate the cheque and recover the amount from the bank[6].

A statement in the articles of association that a certain person shall be the secretary or other officer of the company will not be treated as a contract[7]. Such person should see that the appointment be made by a resolution or by an agreement duly executed after incorporation of the company.

The secretary being a servant of the company is precluded from accepting presents or bonuses from the promoters. If he does so, he will have to account for them[8].

The secretary is the agent of the company through whom the clerical work is done. He must obey the orders of the directors and give effect to their resolutions by issuing notices, sending circulars, writing letters and the like. He will also prepare the agenda for the directors' meetings and general meetings of the company, and usually write up minutes either from his own notes or from those of the chairman of the meeting. He will conduct the ordinary correspondence of the company and answer enquiries or direct clerks to do so[9]. But it is no part of his duties to answer enquires about moneys owing from the company or to make representations on behalf of the company in any matters except those that fall directly within the scope of the company's business [1]. If an agent does an act within the scope of his authority, it binds the principal even if the motive was wrongful and the act was done with a view to his private advantage provided the other party has no knowledge of the wrong [2].

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[1] Cairney v. Back [1906] 2 K.B. 746.

[2] Barwick v. English Joint Stock Bank [1867] L.R. 2 Ex. 259, 16 L.T. 461.

[3] Lloyd v. Grace Smith & Co. [1912] A.C. 716. This has been followed in India in a case in which the writer of this book relied upon Barwick v. Joint Stock Bank (supra) but was overruled by Chatterjee & Pearson JJ ; see Dinabandhu v. Abdul Latif [1922] 27 C.W.N. 18 ; see also Sherajan v. Alimaddi [1915] 20 C. W.N. 268.

[4] Lloyd v. Grace Smith & Co. (supra) at p. 725.

[5] Barwick v. English Joint Stock Bank (supra) at pp. 265, 266.

[6] Kepitgulla Rubber Estates v. National Bank of India [1909] 2 K.B. 1010 ; see also Ruben v. Great Fingal Consolidated [1906] A.C. 439.

[7] See Browne v. La Trinidad [1887] 37 Ch. D.I.

[8] MacKay's case [1876] 2 Ch. D.I.

[9] Gore-Browne, 36th ed. p. 337 ; see also Palmer 13th ed. p. 275.

The duty of the secretary includes certifying transfers and receiving and registering notices on behalf of the company. But where the same man is the secretary to two companies, knowledge acquired by him for one company is not notice to the other [3].

A secretary as such has no authority to bind the company by contract or to make representations as to the company's affairs, so as to induce people to take shares [4], or to register a transfer until it is passed by the company's directors [5]. He can certify a transfer, but if he does so fraudulently, the company will not be liable [6]. If a secretary give untrue answers to inquiries for his own private ends, the company will not be liable [7]. "A secretary is a mere servant ; his position is that he is to do what he is told and no person can assume that he has any authority to make representations binding on the company, nor can any one assume that statements made by him are necessarily to be accepted as trustworthy without further inquiry any more than in the case of a merchant it can be assumed that one who is only a clerk has authority to make representations io induce persons to enter into contracts" [8].

A secretary, unless authorized by the board of directors, cannot convene a general meeting [9], or strike a name off the register of members [10]. An act done by the secretary after mentioning the matter to some of the directors, but without any express approval of the directors and without a board meeting being held to consider the question, will not be considered the act of the directors [11].

A secretary who has in fact acted as a manager is liable for negligence in preparing balance sheets and accounts whereby he has caused dividend to be paid out of capital [12].

A secretary will be liable for misfeasance if he receives an improper commission [13], but he will not be personally liable for misapplication of the company's funds though he may have been aware of it [14].

The resolution to dismiss a secretary, even if defective for want of proper notice, is a matter within the powers of the company, and the secretary cannot treat it as void [15].

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[1] See Bishop v. Balkis Consolidated Co. [1890] 25 Q.B.D. 512 ; George Whitechurch v. Cavanagh [1902] A.C. 117.

[2] Hambro v. Burnand [1902] 2 K. B. 10 ; Bryant v. La Banque du Peuple [1893] A.C. 170.

[3] Fenwick, Stobart & Co. [1902] 1 Ch. 507.

[4] Barnett, Hoares & Co. v. South London Tramways Co. [1887] 18 Q.B.D. 714 ; Newlands v. National E. A. Assn. [1885] 53 L.T. 242 ; Diwan Chand v. Gujranwalla Sugar Mills Co. [1937] L. 644.

[5] Chida Mines v. Anderson [1905] 22 T.L.R. 27 ; Indo-China Steam Navigation Co. [1917] 2 Ch. 100.

[6] George Whitechurch v. Cavanagh (supra).

[7] British Mutual Banking Co. v. Charnwood Forest Ry. Co., [1887] 18 Q.B.D.714.

[8] Barnett, Hoares & Co. v. South London Tramways Co. [1887] 18 Q.B.D. 815.

[9] State of Wyoming Syndicate [1901] 2 Ch. 431.

[10] Wheatcroft's case [1873] 29 L. T. 324.

[11] Haycraft Gold Reduction Co. [1900] 2 Ch. 230 ; State of Wyoming Syndicate (supra).

[12] Municipal Freehold Land Co. v. Pollington [1890] 63 L. T. 238.

[13] MacKay's case [1876], 2 Ch. D.I.

[14] Joint Stock Discount Co. v. Brown [1869] 8 Eq. 381.

[15] Tanjore Permanent Fund v. Sadasiva [1926] 50 M.L.J. 479, [1926] M. 705.

A secretary may be paid out of profits by contract [1].

If the secretary, having plenary powers under the articles to enter into a mortgage on behalf of the company, think it advisable to take direct sanction of the directors, but does not disclose to them his interest in the mortgage which he is bound to disclose, he cannot afterwards take shelter in the fact that he could himself have sanctioned the mortgage [2].

*Directors.**

Directors obligatory.

83A. (1) *Every company shall have at least three directors.*

(2) This section shall not apply to a private company *except a private company being a subsidiary company of a public company.*

* This heading and sections 83A and 83B were inserted by s. 2 of Act XI of 1914. Sub. s. (1) has been substituted for the original sub-s. (1) and the words in italics have been added to sub-s. (2) by the Companies (Amendment) Act, 1936. The original sub-s. (1) was as follows :

(1) Every company registered after the commencement of this Act shall have at least two directors.

Under the previous Acts it was not obligatory upon a company to have directors [3].

Number &c. of directors.

The number, appointment, powers and duties and the proceedings of the meetings of directors are regulated by the company's articles of association, and where the articles are not registered, by Table A in the First Schedule of the Act [4]. The section does not set any limit to the maximum number of directors of a company. The articles usually provide that until otherwise determined by a general meeting, the number of directors shall not be less than, say five, nor more than, say nine. In such cases it is open to the shareholders to vary the number of directors without altering the article itself [5].

True position of directors.

The true position of directors seems to be that of agents for the company with powers and duties of carrying on the whole of its business subject to the restrictions imposed by the articles and the statutory provisions [6]. But they are not agents for the shareholders [7].

Cozens-Hardy L. J. observed : "I do not think it true to say that the directors are agents. I think it more nearly true to say that they are in the position of managing partners appointed to fill that post by a mutual arrangement between all the shareholders" [8]. Upon a careful consideration it will appear that the directors are, strictly speaking, neither agents nor trustees for the company [9].

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1. Spanish Prospecting Co. [1910] W. N. 241, [1911] 1 Ch. 92.
2. Pydah v. Guntur Cotton &c. Mills [1929] M. 353, [1928] M. W. N. 481, 115 I. C. 486.
3. Bulawayo's Market & Offices Co. [1907] 2 Ch. 458 ; cf. s. 92 of Act VI of 1882.
4. S. 18.
5. Gur Prasad v. Rameswar [1933] A. 344, [1933] A. L. J. 290, 143 I. C. 7.
6. Faure Electric Accumulator Co. [1888] 40 Ch. D. 141 ; Lands Allotment Co. [1894] 1Ch. 616 ; Dikshit & Co. v. Mathura Prasad [1924] 22 A. L. J. 883.
7. Gramophone & Typewriter Ltd. v. Stanley [1908] 2 K. B. 89, 105 C. A. ; Percival v. Wright [1902] 2 Ch. 421.
8. Automatic Self-Cleansing Co. v. Cuninghame [1906] 2. Ch. 34 at p. 45.
9. See the observations of Lord Justice James in Smith v. Anderson [1880] 15 Ch. D. 247 at p. 275.

Directors are not trustees for third parties who have made contracts with the company[1]. They are however trustees for the company of their power of approving transfers, issuing and allotting shares and making calls[2]. But the directors are not trustees in the strict sense of the term as observed by Lord Justice James : "A trustee is a man who is the owner of property and deals with it as principal, as owner and as master, subject only to an equitable obligation to account to some persons to whom he stands in the relation of trustee and who are his *cestui que trust*. The same person may fill the office of director and also be trustee having property, but that is rare, exceptional and casual circumstance. The office of a director is that of a paid servant of the company. A director never enters into a contract for himself, but for his principal, that is, for the company of which he is a director and for whom he is acting. He cannot sue on such contracts, nor be sued on them (unless he exceeds his authority). This seems to me to be the broad distinction between trustees and directors"[3].

A director is not in the position of a trustee of his shares for the general body of shareholders, and under ordinary circumstances he may deal with them as freely as any other shareholder provided he does not part with his qualification. But he is a trustee of making calls for the general body of shareholders, and must not use it for his own benefit without regard to their interests[4].

A director or a managing director is not a servant of the company[5].

Director's fiduciary position.

Generally speaking a director stands in a fiduciary position to the company[6], and cannot retain a profit made by him[7], but the constitution of the company may permit him to do so[8] and even to override the wishes of the majority of the shareholders[9]. In any event he can exercise his individual rights as a corporator[10]. Directors are not trustees for individual shareholders, and in the absence of unfair dealing may buy shares from or sell shares to the members without giving them information relating to the prospects of the company known to them but not to the members[11]. If there is any misrepresentation in acquiring the shares or options over them, the directors may be trustees of the profit they make in the transaction[12]. Directors, who so use their powers as to obtain benefits for themselves at the expense of the other shareholders without informing them of the facts, can not be allowed to retain those benefits and must account for them to the company[13]. The law in this respect has been clearly laid down by their Lordships of the Judicial Committee in the following passages : "They view the transaction as one wholly detrimental to the interests of the old company. Moreover even if (contrary to their Lordships' opinion) some benefit did accrue to the old company from the transaction, the overriding fact remains that the old company (acting through its directors and not by its shareholders in general meeting) purported to apply its property for the benefit of those directors. In such a case it is well settled that the Court will treat the transaction as unenforceable, and refuse even to enquire whether the company has derived any benefit from it : and on that ground the company has not received the protection to which it is entitled. In *Aberdeen Railway Co. v. Blakie* [1854] 1 Macq. 365 Lord Cranworth, L. C. used the following language which seems appropriate to the present case :

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[1] Bath v. Standard Land Co. [1911] 1 Ch. 618.

[2] Punt v. Symons & Co. [1903] 2 Ch. 506.

[3] Smith v. Anderson [1880] 15 Ch. D. 247 at p. 275 ; see the observations of Romer J. in City Equitable Fire Insurance Co. [1925] 1 Ch. 407 at p. 426.

[4] Gilbert's case [1870] 5 Ch. App. 559.

[5] Lee Behrens & Co. [1932] 2 Ch. 46 ; Hutton v. West Cork Ry. Co. [1883] 23 Ch. D. 672 ; Normandy v. Ind, Coope & Co. [1908] 1 Ch. 84.

[6] Cavendish-Bentinck v. Fenn [1887] 12 App. Cas. 652.

[7] Cook v. Deeks [1916] 1 A. C. 554.

[8] Costa Rica Ry. Co. v. Forwood [1901] 1 Ch. 746.

[9] Salmon v. Quin & Axtens [1909] 1 Ch. 311.

[10] North-West Transportation Co. v. Beatty [1887] 12 App. Cas. 589.

[11] Percival v. Wright [1902] 2 Ch. 421.

[12] Allen v. Hyatt [1914] 30 T. L. R. 444.

[13] Alexander v. Automatic Telephone Co. [1900] 2 Ch. 56 C. A.

"'This therefore brings us to the general question whether a director of a railway company is or is not precluded from dealing on behalf of the company with himself or with a firm in which he is a partner. The directors are a body to whom is delegated the duty of managing the general affairs of the company. A corporate body can only act by agents and it is of course the duty of those agents so to act as best to promote the interests of the corporation whose affairs they are conducting. Such agents have duties to discharge of a fiduciary nature towards their principal. And it s a rule of universal application, that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which may conflict, with the interests of those whom he is bound to protect. So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into............So inflexible is the rule that no inquiry on that subject is permitted............' "

"The language used by Atkin L. J. in *Underwood v. Bank of Liverpool* [1929] 1 K. B. 775 at p. 796 may well be cited in this connection : 'It was contended that the fact that Underwood was the sole director and practically the sole shareholder, gave him, in pursuance of the articles, actual authority. He was entrusted with all the powers of the company, the company can only act through its directors, and the directors or director, if only one, could do what they willed with the company's assets. If this means anything, it means that a board of directors, acting as such, have actual authority to defraud the company by using the company's assets to pay debts due to butchers or money-lenders by the individual directors. Such an act is quite outside the class of acts—management of the company's business—authorized to be done by the board. The directors, whether collectively or singly, have not actual authority to steal the company's goods' " 1. In the matter of disposal of shares, the directors are merely trustees for the company and if they dispose of the shares at a premium, they are liable to account to the company for the profits with interest. They will not be allowed to retain the profits even on the ground of the acquiescence of the shareholders to be inferred from the presumed knowledge of the share book 2. But directors are not trustees in whom the property of the company has become vested in trust for any specific purpose within the meaning of s. 10 of the Limitation Act 3. Although the position of directors differs from that of trustees in some respects, yet to the extent of their being entrusted with the moneys of the company, they are trustees and are jointly and severally liable for breach of trust 4. The assets of a company are entrusted to the directors to be applied to certain defined objects, and they are responsible as for a breach of trust, if they apply them to other objects 5.

If a director lends money to the company and becomes its creditor, the transaction is not a contract entered into between two independent persons. It is in the nature of

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1. E. B. M. Co. v. Dominion Bank [1937] P. C. 279, 170 I. C. 545 P. C.
2. York & N. M. Ry. Co. [1845] 16 Beav. 485.
3. Narasimha v. Official Assignee [1931] M. 58, 54 Mad. 153, 60 M. L. J. 280.
4. Peninsular Locomotive Co. v. Reed [1937] Pat. 293, 168 I. C. 786 ; Ramskill v. Edwards [1885] 31 Ch. D. 100 ; Carriage Corpn. &c. Assn. [1884] 27 Ch. D. 322.
5. Peninsular Locomotive Co. v. Reed (supra).

a contract between the trustee and his *cestui que trust*. It is not therefore right that the director of an insolvent company about to go into liquidation should be allowed the privileged position of a secured creditor by merely discharging a small portion of the company's indebtedness[1]. A director is not entitled to recover money from the company, advanced at the request of its secretary, where the latter has no power to borrow on behalf of the company and where the request is not made or confirmed by a properly constituted meeting of the directors, even if the company derived some benefit[2].

Directors' powers.

If the directors act outside their powers but within those of the company, the members can ratify and make such act valid[3]. But if they act *ultra vires* the company, the members cannot ratify or acquiesce in such act[4], articles being a contract between the members *inter se*[5]. When a company has delegated its powers and duties to directors and there is a deadlock which prevents the directors fulfilling their duties, the company can then act[6]. A company cannot take the control of its affairs out of the hands of the directors and give powers to a committee except in the manner provided in the articles ; so, if there be no power to remove directors, the company will have to wait until the articles are altered or the obnoxious directors retire in due course[4]. "A company is an entity," observed Lord Justice Greer in a recent case, "distinct alike from its shareholders and its directors. Some of its powers may, according to its articles, be exercised by directors, certain other powers may be reserved for the shareholders in general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers. The only way in which the general body of shareholders can control the exercise of the powers vested by the articles in the directors is by altering their articles, or if opportunity arises under the articles, by refusing to re-elect the directors of whose actions they disapprove. They cannot themselves usurp the power which by the articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of shareholders"[7].

The company is bound by contracts made by the directors acting within the scope of their authority, even if they are influenced by some improper motive or intention to derive profit for themselves[8]. The remedy of the company in such a case is against the directors[9]. If they act outside their powers, but within those of the company, the shareholders can ratify their action by an ordinary resolution[10]. It has been held that where an agent accepts or endorses a bill or note "per pro" the taker is bound to inquire as to the extent of the agent's authority ; but where the agent has such authority,

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1. Thakur Das v. Ram Gulam [1937] Pat. 151. See also A. H. Mahomed Ismail & Co. v. Sachidananda [1936] 40 C. W. N. 769.
2. Cleadon Trust Ltd. [1938] Ch. 660, affirmed by the Court of Appeal in [1939] 1 Ch. 286.
3. Nagar Damodar v. Gudlimar [1915] 39 Mad. 101.
4. Automatic S. C. F. Syndicate v. Cuninghame [1906] 2 Ch. 34 ; see also Quin & Axtens v. Salmon [1909] A. C. 442 ; Gramophone &c. Ltd. v. Stanley [1908] 2 K. B. 89, see the observation of Buckley L.J. at p. 105. But see the new s. 86-G.
5. Browne v. La Trinidad [1887] 37 Ch. D. I.
6. Barron v. Potter [1914] 1 Ch. 895 ; Foster v. Foster [1916] 1 Ch. 532 ; Isle of Wight Ry. Co. v. Tahourdin [1883] 25 Ch. D. 320.
7. John Shaw & Sons, Ltd. v. Shaw [1935] 2 K. B. 113 C. A. at p. 134.
8. Bryant v. La Banque du Peuple [1893] A. C. 170.
9. Ram Baran v. Maffassal Bank [1924] 83 I. C. 149, [1925] A. 206.
10. Irvine v. Union Bank of Australia [1877] 2 App. Cas. 266 ; Grant v. United K. S. Rys. Co. [1888] 40 Ch. D. 135 (138-39).

his abuse of it does not affect a *bona fide* holder for value 1. A company is liable for all the acts done by its directors, even though unauthorized by it, provided such acts are within the apparent authority of the directors and not *ultra vires* of the company 2. Where by the articles the directors were directed forthwith to execute by affixing seal of the company to the scheduled agreement entered into with a firm, strangers to the company are entitled to assume that that direction has been carried out, and that as a consequence the firm is entitled to act as managing agents with the power conferred by the scheduled agreement 3. Where money had been paid to A by B in circumstances such that A by action could not have recovered moneys from B, but such that there is nothing unconscionable or improper in A, having been in fact paid, retaining the money, B cannot sue A to recover the amount so paid though not legally due by him 4.

Where one of the directors of a company acknowledged a debt of the company by signing his name and affixing a rubber stamp bearing the company's name and the word "director" appearing below his signature, but this director had no formal authority from the board, the acknowledgment however being in the ordinary course of business, it was *held* that such an acknowledgment was sufficient to save limitation within the meaning of s. 19 of the Limitation Act 5.

The general clause in the articles giving the directors powers of management and all the powers of the company which are not otherwise dealt with, cannot be construed *ejusdem generis*, but it is valid and effectual 6. The directors are the only persons who can deal with the matters thus assigned to them and their decision cannot be overruled by a general meeting of the shareholders (see note 4 of last page), unless the directors act in their own interest against the interest of the company 7. They should however communicate their policy to the shareholders and are bound to do so, if it is attacked by a member 8.

If a director sell a property, already his own, to the company at an enhanced price, the latter cannot claim the profits ; its remedy is to rescind the contract returning the property. But if that is impossible, it cannot claim either the profit or damages 9. Where the benefit of a contract belongs in equity to the company, the directors cannot validly use their voting power to vest it in themselves 10.

In the absence of fraud or oppression the votes of interested directors in general meeting are valid, and a minority cannot sue to set aside the transaction 11. But if the directors are seeking to appropriate to themselves the company's property, not even a resolution of the general meeting carried by their votes will protect them, and a single member can sue 12.

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1. Bryant v. La Banque du Peuple, supra.
2. Royal British Bank v. Turquand [1856] 6 E. & B. 327 ; Rambaran v. Muffassal Bank [1925] A. 206, 83 I. C. 142 ; Dehra Dun Mussorie E. Tramways Co. v. Jagamander [1932] A. 141, [1931] A. L. J. 1038, 134 I. C. 244.
3. Sree Minakhi Mills v. Callianjee [1935] M. 799, 68 M. L. J. 510, 156 I. C. 570.
4. Sree Minakshi Mills v. Callianjee [1935] M. 799, 68 M. L. J. 510, 156 I. C. 570.
5. Amulya v. Coral Engineering Works [1929] C. 155, 48 C. L. J. 597, 115 I. C. 177.
6. Pyle Works No. 2 [1891] 1 Ch. 173.
7. Marshall's Valve Gear Co. v. Manning, Wardle & Co. [1909] 1 Ch. 267.
8. Peel v. London & N. W. Ry. Co. [1907] 1 Ch. 5.
9. Jacobus Marler Estates v. Marler [1916] 114 L. T. 640 n., 85 L. J. (P. C.) 167 n.
10. Cook v. Deeks [1916] 1 A. C. 554.
11. North-West Transportation Co. v. Beatty [1887] 12 App. Cas. 589 ; Burland v. Earle [1902] A.C. 83.
12. Cook v. Deeks (supra).

The directors are however the proper persons for instituting a suit and the company is the proper plaintiff in such an action 1. But effect should be given to the wishes of the majority of shareholders. When they desire that proceedings should be taken, an action may be commenced in the company's name as plaintiff by such majority, or even in case of urgency, by one or more shareholders who believe that they have the support of the majority and subsequently obtain the sanction of a resolution of a general meeting 2.

When it comes to the knowledge of the Court that a suit has been brought without the authority of the plaintiff named on the record, the action will be struck out and any order made in the course of the proceedings will be discharged 3.

The directors are not entitled to use their power of issuing shares for the purpose merely of retaining control of the company's affairs or defeating the wishes of the existing shareholders 4.

Where a director is a shareholder of another company, whether beneficially or as a trustee, he is precluded, without regard to the quantum of his holding, from dealing, on behalf of the company of which he is a director, with the other company, unless and so far as he is authorized by the articles 5. If the second company has notice of the irregularity, the first company may obtain rescission, even after completion, provided that rescission is still possible 5.

Limitation of powers.

Persons dealing with a company are deemed to have notice of such limitations of the powers of the directors or of the company as are contained in the memorandum or articles of association 6. So they cannot rely upon ignorance of the limitations 7. A person dealing with the directors must take the articles of association to be such as appear at the office of the registrar of companies 8.

Ultra vires acts of directors.

A company is not bound by acts *ultra vires* of its directors, unless such acts have been expressly ratified by all the shareholders, or unless all with knowledge or notice have acquiesced in what has been done 9. "To render valid", observed their Lordships of the Privy Council, "an act of the directors of a company which is *ultra vires*, the acquiscence of the shareholders must be of the same extent as the consent which would have given validity from the first, *viz*., the acquiescence of each and every shareholder of the company. Of course the acquiescence cannot be presumed unless knowledge of the transaction can be brought home to every one of the remaining shareholders......By knowledge of the transaction Lord Chelmsford clearly meant knowledge of the invalidity of the transaction......There can in truth be no ratification without an intention to ratify, and there can be no

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1. Burland v. Earle (supra).
2. La Compagnie de Mayville v. Whitley [1896] 1 Ch. 788, 803. But see Quin & Axtens v. Salmon [1909] A.C. 442 and Automatic S.C. Filter Co. v. Cuninghame (supra).
3. Daimler Co. v. Continental Tyre Co. [1916] 2 A.C. 307. In this case the secretary without authority instructed a solicitor to commence proceedings in the company's name.
4. Piercey v. S. Mills & Co. [1920] 1 Ch. 77.
5. Transvaal Lands Co. v. New Belgium &c. Co. [1914] 2 Ch. 488.
6. Quin & Axtens v. Salmon [1909] A. C. 442.
7. Ashbury Ry. Carriage & Iron Co. v. Riche [1875] 7 H. L. 653 ; Baroness Wenlock v. River Dee Co. [1885] 10 App. Cas. 354.
8. Irvine v. Union Bank of Australia [1877] 2 App. Cas. 366.
9. Bhagirath Spinning & Weaving Co. v. Balaji Bhavani [1930] B. 207, 54 Bom. 178.

intention to ratify an illegal act without knowledge of the illegality"[1], following *Irvine v. Union Bank of Australia*[2] where Sir Barnes Peacock delivering the judgment of the Privy Council said : "Their Lordships think that it would be competent for a majority of the shareholders present......at an extraordinary meeting convened for that object, and of which object due notice had been given, to ratify an act previously done by the directors in excess of their authority, and they are not prepared to say that if a report had been circulated before a half-yearly meeting distinctly giving notice that the directors had done an act in excess of their authority, and that the meeting would be asked by confirming the report to ratify the act, this might not be sufficient notice to bring the ratification within the competency of the majority of the shareholders present at the half-yearly meeting." Mere acquiescence of the shareholders would not amount to ratification[1].

The assets of a company cannot be disposed of by a resolution of the directors only. They can only be disposed of after the resolution of the shareholders passed at a special meeting called for the purpose of winding up the company. A resolution of the directors for the purpose of such disposal is *ultra vires*[3]. Where in respect of the policy-holders' trust fund the articles of association empowered the directors by an unanimous resolution to purchase property, it was held that the resolution of the directors authorizing the construction of a building was *ultra vires* and opposed to the articles of association, purchase of property not being the same thing as the erection of a house[4].

Directors' remuneration.

Directors are not entitled to any remuneration[5], as of right, unless the articles provide for it and fix the amount[6]. In the absence of a provision to that effect, any remuneration given them is in the nature of a gratuity[7]. In a going company a general meeting may vote a gratuity beyond the amount prescribed in the articles ; but upon liquidation this cannot be done[7]. If the director's appointment has not been validly made, he cannot recover any remuneration, although he may have served for a long time[8]. If the articles provide that a director will receive remuneration at the rate of so much per annum, he will be entitled to a proportionate amount for a broken period[9], but if it is a payment for a year, he cannot get it if he does not serve for the whole year[10]. Where the articles declare that the fees are to be divided among the directors in such proportions as they shall determine, no director can sue for his fees until the directors have determined the proportion[11]. The continuing directors may determine that a retiring director shall not receive any part of the remuneration[12]. When the remuneration is by a percentage of

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1. Premila Devi v. Peoples Bank of N. India [1938] P. C. 284, 43 C. W. N. 205.
2. [1877] 12 App. Cas. 366 at p. 375.
3. U Ba Din v. Janki Devi [1938] Rang. 447.
4. United India Life Assurance Co. v. Krishna Rao [1934] M. 411, 67 M. L. J. 336.
5. George Newman & Co. [1895] 1 Ch. 674 ; Dikshit & Co. v. Mathura Prasad [1924] 22 A. L. J. 883 ; Woolf v. East Nigel &c. Co. [1905] 21 T. L. R. 660.
6. Dover Coalfields Extension [1908] 1 Ch. 65 ; Young v. Naval & M. C. Society [1905] 1 K. B. 687.
7. Hutton v. West Cork Ry. Co. [1883] 23 Ch. D. 654 ; Stroud v. Royal Aquarium [1903] 89 L. T. 243 ; Warren v. Lambeth Water Works [1905] 21 T. L. R. 685.
8. Woolf v. East Nigel &c. Co. [1905] 21 T. L. R. 660.
9. George Newman & Co. (supra) ; Per Younger L. J. in Moriarty v. Regents Garage Co. [1921] 2 K. B. 766 at p. 786 ; Diamond v. English Sewing Cotton Co. [1922] W. N. 237.
10. British Murac & Rubber Syndicate v. Alperton Rubber Co. [1915] 2 Ch. 186.
11. Plantations Trust v. Bila Rubber Lands [1916] 85 L. J. (Ch.) 801, 114 L. T. 676.
12. Gilman v. Guchar &c. Co. [1886] 3. T. L. R. 133 ; Joseph v. Sonora Land Co. [1918] 34 T. L. R. 220.

profits, it does not include a share of the profits made on the sale of the whole business of the company [1]; but it will include profits which exist in specie, even though not converted into cash until after liquidation [2]. The sale of the bulk of the company's properties, so that the directors' duties are greatly reduced, does not disentitle them to their full remuneration [3].

Where the articles are silent, a general meeting may vote the directors' remuneration which is in the nature of a gratuity [4]. This cannot however be done after the company has gone into liquidation [5]. But where remuneration is allowed, it may be proved as a debt on winding up in competition with the ordinary creditors [6].

Where one of the objects of a company is to promote other companies, a director is not entitled to claim any remuneration for performing any duties in connection with the promotion of a new company over and above what has been fixed as his remuneration by the articles [7]. A resolution passed by the directors, while the company is a going concern, to forego or postpone their fees will be binding [3]. A company cannot ratify the payment by directors of remuneration in excess of that allowed by the articles without first altering the articles or passing a special resolution [8]. Directors cannot pay the income-tax on their remuneration out of the company's assets [8].

Unless authorized by the articles the directors cannot vote themselves remuneration or make present to themselves, or to one of their body, out of the company's funds [9].

Compensation for loss of office.

As to the claim for compensation for loss of office by a governing director see *T. N. Farrer Ltd.* [1937] 1 Ch. 352 where it has been held that such a claim of a life director on a voluntary liquidation was not maintainable as his employment as such was conditional on the continued existence of the company and ceased automatically when it was wound up.

Resignation.

Subject to the provisions in the articles a director can resign his office [10], and the resignation takes effect from the date on which notice is given which cannot be withdrawn without the consent of the company, even though no acceptance has taken place [10]. A company cannot be compelled to employ a director against his will [11]. The remedy lies in damages for breach of contract, if there be any [11]. A director who is unsatisfactory may be removed by the company, but the power of removal is governed entirely by the articles [12] and s. 86-G.

Indemnification.

A director who incurs liability in acting as an agent of the company is entitled to be indemnified by the company [13]. Being agents of the company, the directors are not liable to strangers for the acts and defaults of the company [14], unless they pledge their personal credit [15]. Where a director gave

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[1] Frames v. Bultfontein Mining Co. [1891] 1 Ch. 140.

[2] Spanish Porspecting Co. [1911] 1 Ch. 92.

[3] Consolidated Nickel Mines [1914] 1 Ch. 883.

[4] George Newman & Co. (supra).

[5] Stroud v. Royal Aquarium (supra).

[6] Exp. Beckwith [1898] 1 Ch. 324.

[7] Dikshit & Co. v. Mathura Prasad [1924] 22 A. L. J. 883.

[8] Boschoek Proprietary Co. v. Fuke [1906] 1 Ch. 148.

[9] Young v. Naval Society [1905] 1 K. B. 687; Boschoek &c. Co. v. Fuke (supra).

[10] Glossop v. Glossop [1907] 2 Ch. 370; but see *Municipal Freehold Land Co. v. Pollington* [1890] 63 L. T. 238 where Kekewich J. has held that a director cannot resign his office to his colleages and must be held responsible as a director up to the date of the general meeting. But this, it is apprehended, depends entirely on the articles of association of a particular company. See sub-s. (2) of the new s. 86-I, *post*.

[11] Bainbridge v. Smith [1889] 41 Ch. D. 462.

[12] See Browne v. La Trinidad [1887] 37 Ch. D. 1.

[13] Famatina D. Corporation [1914] 2 Ch. 271.

[14] Chapman v. Smethurst [1901] 1 K. B. 927.

[15] Dutton v. Marsh [1871] 6 Q. B. 361; Gadd v. Houghton [1876] 1 Ex. D. 357, 35 L. T. 222.

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an undertaking in writing expressed to be made "jointly and severally" for payment of salary to an employee of the company followed by the signature of the director as "managing director," there was no remedy under the contract against him personally 1. An indemnity clause in the articles such as "the directors or auditors shall not be answerable for any loss, damage &c. unless they shall happen by or through their own wilful neglect or default" saves them from a misfeasance summons 2.

Directors' powers and liabilities.

A director can compromise an action against the company in the interest of the company although the action may be ill-founded 3. Directors cannot by a contract deprive themselves of the power to control a manager so as to confer powers on him to the exclusion of themselves 4. But if they have power of delegation, a stranger may assume that it has been properly exercised 5; and this applies to persons having apparent though not actual authority 6. Actual or constructive notice of the irregularity will however deprive the party dealing with the company of this protection 7.

Where shareholders know that their directors have been exceeding their legal powers and take no steps in the matter, but allow the things done to remain unimpeached for years, they must be taken to have retrospectively sanctioned what has been done 8. But a company is not bound by acts *ultra vires* of its directors unless such acts have been expressly ratified by all the shareholders, or unless all with knowledge or notice have acquiesced in what has been done 9.

A director is liable for misapplication of the company's money though it has not gone into his pocket. But he has the protection of s. 281, even if the act is *ultra vires*, but done in good faith 10. Directors are not liable for fraud or misconduct (*e.g.*, issuing fraudulent prospectus) of their co-directors or other persons employed by the company 11, unless they have expressly or tacitly permitted its commission 11.

A director is not responsible for declaring a dividend unwisely. He is liable if he pays it out of capital, but the onus of proving that he has done so lies upon the person who alleges it 12. The directors cannot be made liable for an infringement of patent by the company merely by reason of their position as directors, even in a case where they are the sole directors and shareholders of the infringing company 13.

Where it is provided in the articles of association that the directors shall not be liable for "wilful default", they must be shown to have known that they were doing wrong 14. For the meaning of the expression "wilful default" see notes to s. 25-A

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1. Re Lavey, ex. p. Trustee [1920] 1 K. B. 674.
2. City Equitable Fire Insurance Co. [1925] 1 Ch. 407 ; but now see s. 86 C *post.*
3. Bath's case [1878] 8 Ch. D. 334 ; Dixon's case [1870] 5 H. L. 606.
4. Horn v. Henry Faulder & Co. [1908] 99 L. T. 524.
5. Totterdell v. Fareham Blue Brick Co. [1866] 1 C.P. 674 ; Biggerstaff v. Rowatt's Wharf [1896] 2 Ch. 93.
6. Dey v. Pullinger Engineering Co. [1921] 1 K. B. 77, overruling Premier Industrial Bank v. Carlton Manufacturing Co. [1909] 1 K. B. 106.
7. Wandsworth Gas Light Co. v. Wright [1870] 22 L. T. 404 ; Irvine v. Union Bank of Australia [1877] 2 App. Cas. 366.
8. Houldsworth v. Evans [1868] L. R. 3 H. L. 263, per Lord Cranworth.
9. Bhagirath Spinning & Weaving Co. v. Balaji Bhavani [1930] B. 267, 54 Bom. 178, 32 Bom. L. R. 87, 125 I. C. 419.
10. Claridge's Patent Asphalte Co. [1921] 1 Ch. 543 ; Brazilian Rubber Estates [1911] 1 Ch. 425.
11. Cargil v. Bower [1878] 10 Ch. D. 502.
12. City Equitable Fire Insurance Co., infra.
13. British Thompson Houston Co. v. Sterling Accessories Ltd. [1924] 2 Ch. 33.
14. City Equitable Fire Insurance Co. [1925] 1 Ch. 407. But by the new s. 86-C such provisions in the articles have been rendered void.

ante. A director is entitled to rely on his subordinates doing their duty, in the absence of any ground for suspicion, and is not liable if the company sustains damage owing to the fraud and neglect of such subordinates 1. On this question in the case of the *National Bank of Wales* 2 Lindley M. R. observed: "Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as those below them, until there is reason to distrust them. We agree that care and prudence do not involve distrust; but for a director, acting honestly himself, to be held legally liable for negligence in trusting the officers under him not to conceal from him what they ought to report to him, appears to us to be laying too heavy a burden on honest business men." This case was taken to the House of Lords in *Dovey v. Cory* 3 where Lord Davey said: "I think the respondent was bound to give his attention to and exercise his judgment as a man of business on the matters which were brought before the board at the meetings which he attended and it is not proved that he did not do so. But I think he was entitled to rely upon the judgment, information and advice of the chairman and general manager, as to whose integrity, skill and competence he had no reason for suspicion. I agree with what was said by Sir George Jessel in *In re Hallmark's case* 4, by Chitty J. in *In re Denham & Co.* 5, that directors are not bound to examine entries in the company's books, it was the duty of......... and (possibly) of the chairman to go carefully through the returns from the branches, and to bring before the board any matter requiring their consideration; but the respondent was not, in my opinion, guilty of negligence in not examining them for himself, notwithstanding that they were laid on the table of the board for reference."

Where a director purchased property without a mandate from the company and under such circumstances as did not make him a trustee thereof for the company, and thereafter resold the same to the company at a profit, it was held that whether or not the company was entitled to a rescission of the contract of resale, it was not entitled to affirm it and at the same time to treat the director as trustee of the profits made 6.

A Civil Court can grant an injunction on the application of a director restraining his co-directors from wrongfully excluding him from acting as a director 7.

As the shareholders leave all the business of the company in the hands of the directors, it is highly incumbent on them that they act without raising the slightest suspicion of dishonesty 8.

Duties of directors.

The manner in which the work of a company is to be distributed between the board of directors and the staff, is a business matter to be decided on business lines. The larger the business carried on by the company, the more numerous and the more important the matters, they must of necessity be left to the managers, the accountants and the rest of the staff 9.

In ascertaining the duties of a director it is necessary to consider the nature of the company's business and the manner in which the work of the company is, reasonably in the circumstances and consistently with the articles, distributed between the directors and the other officials of the company. In discharging those duties a director (a) must act honestly, (b) must exercise such degree of skill and diligence as would amount to the

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1. *Ibid*; Dovey v. Cory [1901] A. C. 477.
2. [1899] 2 Ch. 629 at p. 673.
3. [1901] A. C. 477 (493).
4. [1878] 9 Ch. D. 329.
5. [1883] 25 Ch. D. 752.
6. Burland v. Earle [1902] A. C. 33.
7. Sarat v. Tarak [1924] 51 Cal. 916, 28 C. W. N. 803.
8. Dikshit & Co. v. Mathura Prosad [1924] 22 A. L. J. 883.
9. City Equitable Fire Insurance Co. [1925] 1 Ch. 407.

reasonable care which an ordinary man might be expected to take in the circumstances on his own behalf; but (c) he need not exhibit in the performance of his duties a greater degree of skill than what can reasonably be expected from a person of his knowledge and experience; in other words, he is not liable for mere errors of judgment; he is (d) not bound to give continuous attention to the affairs of his company; his duties are of an intermittent nature to be performed at periodical board meetings and at meetings of any committee to which he is appointed, and though not bound to attend all such meetings, he ought to attend them when reasonably able to do so; and (e) in respect of all duties which, having regard to the exigencies of business and the articles of association, may properly be left to some other official, he is in the absence of suspicious grounds justified in trusting that official to perform such duties honestly [1].

A director who signs a cheque that appears to be drawn for a legitimate purpose is not responsible for seeing that the money is in fact required for that purpose, or that the cheque comes before him for signature in the regular way, having regard to the usual practice of the company. A director must of necessity trust the officials of the company to perform properly and honestly the duties allocated to them [1].

Before any director signs a cheque or parts with a cheque signed by him, he should satisfy himself that a resolution has been passed by the board or committee of the board authorizing the signature of the cheque; and where a cheque has to be signed between meetings, he should obtain the confirmation of the board subsequently [1].

The authority given to the board or committee should not be for the signing of numerous cheques to an aggregate amount, but a proper list of the individual cheques mentioning the payee and the amount of each should be read out at the board or committee meetings and subsequently transcribed into the minutes of the meeting [2].

It is the duty of each director to see that the company's moneys are, from time to time, in a proper state of investment, except so far as the articles of association may justify him in delegating that duty to others [3].

Directors' duties cannot be shirked by leaving everything to others [4].

Before presenting the annual report and balance sheet to the shareholders and before recommending a dividend, directors should have a complete and detailed list of the company's assets and investments prepared for their own use and information and ought not to be satisfied as to the value of the company's assets merely by the assurance of their chairman, however apparently distinguished and honourable, nor with the expression of belief of their auditors, however competent or trustworthy [3].

It is not the duty of a big insurance company to supervise personally the safe custody of the securities of the company. It would be impracticable on every purchase of securities for actual delivery thereof to be made to the directors, or on every sale for the delivery to the brokers of the securities sold, to await a meeting of the board or a committee of directors. The duty of seeing that the securities are in safe custody must of necessity be left to some official of the company in daily attendance at the office of the company, such as the manager, accountant or secretary [3].

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[1] City Equitable Fire Insurance Co. (supra); see also Overend & Gurney Co. v. Gibb [1872] 5 H. L. 480; Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate [1899] 2 Ch. 392; Dovey v. Cory [1901] A. C. 477; and Brazillian Rubber Estate (supra).

[2] City Equitable Fire Insurance Co. (supra), distinguishing Joint Stock Discount Co. v. Brown [1869] 8 Eq. 381.

[3] Ibid.

[4] Drincqbier v. Wood [1899] 1 Ch. 393.

An outsider dealing with a company cannot be compelled to search the register and find for himself whether a person who was permitted to act as a director for any length of time was also its director *de jure* 1.

General observations.

The articles of association, though not themselves a contract between the company and the director, must be regarded as showing the terms upon which on the one hand he agrees to act as a director and on the other hand the company agrees to pay him remuneration for his services 2. But the articles do not constitute a contract with the vendor 3.

One company may be a director or manager of another company 4. A director cannot make any profit out of his agency without the knowledge and consent of his principal—the company 5.

If there is no power to remove a director, the articles must first be altered to give such a power before he can be removed 6. But see the new s. 86-G.

A director can, if qualified, sustain an action in his own name against the other directors on the ground of individual injury to himself and for an injunction to restrain them from wrongfully excluding him from acting as a director 7.

A company is liable in an action of deceit for the fraud of its directors in managing the affairs of the company to the same extent as if the fraud were its own 8.

As to the powers, duties, remuneration &c. of the directors and proceedings of their meetings, see regs. 68 to 94 of Table A and notes thereto. See also notes to ss. 83 and 83 B.

Knowledge.

The knowledge of a director is not necessarily the knowledge of the company 9. The knowledge of a common director 10, secretary 11, or manager 12, or other officer 13, is not necessarily a notice to the company. In order to prove such a notice it must be shown that it was his duty to the first company to communicate the fact to the second 11.

Suit for removal.

A suit challenging the position of a particular board of directors and to remove the directors from the directorate is wrongly constituted. But a suit for a declaration that the plaintiff is a director and for the protection of his rights *qua* director is competent 14.

Appointment of directors.

83B. (1) In default of and subject to any regulations in the articles of a company other than a private company—

(*i*) the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors shall have been appointed ;

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1. Pudumjee v. Moos [1925] 27 Bom. L. R. 1218, [1926] B. 28 ; Mahony v. East Holyford Mining Co. [1875] 7 H. L. 869.
2. Molineaux v. London &c. Insurance Co. [1902] 2 K. B. 589, 596.
3. Caribbean Co. [1875] 10 Ch. App. 614.
4. Bulawayo Market & Offices Co. [1907] 2 Ch. 458.
5. Parker v. Mc Kenpa [1875] 10 Ch. App. 96 ; Bray v. Ford [1896] A.C. 44, 50.
6. Imperial Hydropathic Hotel Co. v. Hampson [1882] 23 Ch. D. 1.
7. Pulbrook v. Richmond &c. Co. [1878] 9 Ch. D. 610 ; Subramania v. United India L. I. Co. [1928] M. 1215, 55 M.L.J. 385.
8. Barwick v. English Joint Stock Bank [1867] L. R. 2 Ex. 259, 16 L. T. 461.
9. Peruvian Railways Co. v. Thames Insurance Co. [1867] 2 Ch. App. 617.
10. Marseilles Extension Ry. Co. [1871] 7 Ch. App. 161 ; David Payne & Co. [1904] 2 Ch. 608.
11. Fenwick Stobbart & Co. [1902] 1 Ch. 507.
12. Hardy v. Metropolitan Land Co [1872] 2 Ch. App. 427.
13. Hampshire Land Co. [1896] 2 Ch. 743.
14. Sati Nath v. Suresh Chandra [1941] C. 136, [1941] 1 Cal. 560.

(*ii*) the directors of the company shall be appointed by the members in general meeting ; and

(*iii*) any casual vacancy occurring among the directors may be filled up by the directors, but the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director.

(2) *Notwithstanding anything contained in the articles of a company other than a private company not less than two-thirds of the whole number of directors shall be persons whose period of office is liable to determination at any time by retirement of directors in rotation :*

Provided that nothing herein contained shall apply to a company incorporated before the commencement of the Indian Companies (Amendment) Act, 1936, where by virtue of the articles of the company the number of directors whose period of office is liable to determination at any time by retirement of directors in rotation falls below the two-thirds proportion mentioned in this section.

This section also was inserted by the amending Act 11 of 1914. It does not apply to a private company. See reg. 68 of Table A and notes.

By the Companies (Amendment) Act, 1936 the original s. 83B has been numbered as sub-s. (1), and sub-s. (2) with its proviso has been added. For the effect of the amendment see Introduction. The Companies (Amendment) Act, 1936 came into force on 15th January, 1937. See Introduction.

Appointment of directors.

If the first directors are not named in the articles, their appointment may be made by the subscribers to the memorandum of association, either by the majority at a meeting of the subscribers or by a writing signed by all the subscribers 1.

As to the restrictions on the appointment of directors by the articles or advertisement thereof in the prospectus, see the next section.

Where the shareholders alone have the right to appoint directors, they cannot by agreement give another company a power to nominate a director 2 ; but if the articles authorize delegation of the power to a third party, the Court will recognize the right so delegated 3. A mere right of nomination will not necessarily amount to an appointment of the directors nominated, and the Court may grant or refuse specific performance of the agreement 4.

Where the express power of appointing additional directors is vested in the board, it excludes any implied concurrent power to the same effect in the company 5. Where the power is given by the articles to the shareholders alone to appoint a managing

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1. John Morley Building Co. v. Barras [1891] 2 Ch. 386, 392 ; Great Northern Salt Works [1890] 44 Ch. D. 472.
2. James v. Eve [1873] 6 H. L. 335.
3. Moriarty v. Regents Garage Co. [1921] 2 K. B. 766, 786.
4. Plantations Trust v. Bila Rubber Lands [1916] 85 L.J. Ch. 801, 114 L.T. 676.
5. Blair Open Hearth Furnace Co. v. Reigart [1913] 108 L. T. 665, 29 T. L. R. 449 ; but see Foster v. Foster [1916] 1 Ch. 532.

director, the directors cannot by an agreement give him power to nominate a director 1. See notes to reg. 85 of Table A.

When a director's office will be vacated.

The office of a director will be *ipso facto* vacated 2 on happening any of the events provided in s. 86-I and in the articles, such as, if he becomes bankrupt or insolvent 2 ; but this does not prevent a person who is a bankrupt at the time of his appointment from holding the office 3. As to the meaning of the word insolvent see *Sissons* v. *Sissons* 4. Various facts and admissions showing that the director knows that he cannot meet his liabilities constitute evidence on which the Court may find him to be disqualified under such an article 5. Absence through sickness however is not a disqualification 6. See reg. 77 of Table A and notes thereto.

If the vacating director's place is not validly filled up at the first or the adjourned meeting, they will continue in office 7. But where no meeting is held during the year, the directors who ought to have retired at the meeting for that year cease to be directors on the expiration of the year 8. See regs. 81 and 82 of Table A and notes thereto.

Appointment of managing director.

Directors cannot appoint one of themselves to an office of profit or delegate powers to a managing director unless expressly empowered by an article or by a resolution of the company 9. If the articles give the power of appointing a managing director to the board, the company in general meeting cannot make the appointment even if there is another article empowering them to manage only subject to such regulations as the company may prescribe 10.

Managing director's remuneration.

If the managing director's commission is on "net profits,' or "profits earned by the company," this means the excess of the receipts of the year over the current expenses and out-goings of the year, *i.e.*, the fund which but for such commission might for that year be lawfully applied in payment of dividend, and any liability for excess profits duty for that year must be deducted in arriving at the "net profits" 11. See reg. 72 of Table A and notes thereto.

Chairman of the board of directors.

If the articles empower the directors to elect a chairman and determine the period for which he is to hold office, and the directors appoint a chairman, they appoint him for such time as they think fit and there is no contract that he shall remain chairman until he ceases to be a director, but it is open to the directors at any time to substitute another chairman at his place 12. See reg. 90 of Table A and notes thereto.

Sub-s. (1), cl. (iii). One of the articles of a company provided : The directors shall have power at any time, and from time to time, to appoint any other qualified person to be director, either to fill a vacancy or as an addition to the board but so that the total number of directors shall not at any time exceed the maximum number

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1. James v. Eve [1873] 6 H. L. 335.
2. Bodega Co. [1904] 1 Ch. 276.
3. Dawson v. African Consolidated &c. Co. [1898] 1 Ch. 6. But see the new s. 86-A.
4. [1910] 54 S. J. 802.
5. London & Counties Assets Co. v. Brighton G. C. Hall [1915] 2 K.B. 483.
6. Mack's Claim [1900] W.N. 114 ; Mc Connell's Claim [1901] 1 Ch. 728.
7. Great N. S. & Chemical Works [1890] 44 Ch. D. 472 at p. 482.
8. Consolidated Nickel Mines [1914] 1 Ch. 883 (there was a question of remuneration).
9. Boschoek Proprietary Co. v. Fuke [1906] 1 Ch. 148 at p. 159 ; Nelcon v. James Nelson & Sons [1914] 2 K.B. 770 at p. 779.
10. Thomas Logan Ltd. v. Davies [1911] 104 L. T. 914.
11. Patent Castings Syndicate v. Etherington [1919] 2 Ch. 254; Vulcan Motor & Engineering Co. v. Hampson]1921] 3 K.B. 597.
12. Foster v. Foster [1916] 1 Ch. 532.

fixed by the articles and any person so appointed shall retain his office only until the next following meeting, and shall then be eligible for re-election : *Held*, the ordinary power of the company in general meeting to appoint additional directors had not been excluded by the articles of association 1.

84. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in relation to any intended company or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

Restrictions on appointment or advertisement of director.

(*i*) signed and filed with the registrar a consent in writing to act as such director ; and

(*ii*) save in the case of *companies* not having a share capital, either signed the memorandum for a number of shares not less than his qualification (if any) *or taken from the company and paid or agreed to pay for his qualification shares* or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any) *or made and filed with the registrar an affidavit to the effect that a number of shares, not less than his qualification (if any), are registered in his name.*

(2) On the application for registration of the memorandum and articles, *if any*, of a company the applicant shall file with the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding five hundred rupees.

(3) This section shall not apply to a private company *or a company which was a private company before becoming a public company* nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

Amendment.

By the Companies (Amendment) Act, 1936, following s. 140 of the English Act of 1929, in cl. (ii) of sub-s. (1) for the words "a company limited by guarantee and" after the words "in the case of," the word "companies" has been substituted, and the words in italics have been inserted, and in sub-ss.

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1. Topandas v. Yeotmal Electric Supply Co. [1940] S. 187, 190 I.C. 551, relying on Worcester Corsetry, Ltd. v. Wittings [1936] Ch. 640.

(2) and (3) also the words in italics have been inserted. For the effect of the amendments see Introduction.

This section applies to companies which invite the public to take shares, and probably does not apply to a prospectus sent to the existing shareholders only 1.

The result of non-compliance of sub-sec. (1) is not stated. Probably the appointment is void and the person responsible is liable in damages.

What is good payment.

The shares to be taken by a director need not be paid for in cash. Any honest payment in money's worth is a good payment 2. A person who acts as a director is sometimes deemed to have agreed to take his qualification shares 3.

Qualification of director.

85. (1) Without prejudice to the restrictions imposed by section 84, it shall be the duty of every director who is by the articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

Amendment.

By the Companies (Amendment) Act, 1936 the original sub-s. (2) has been omitted and sub-s. (3) has been renumbered as sub-s. (2). The reason for the omission is that the provision has been transferred to the new s. 86-I (1) (a). The original sub-s (2) was as follows :

> (2) The office of director of a company shall be vacated if the director does not, within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification ; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

Agreement to take qualification shares.

Unless the articles require it, a director need not hold any qualification ; for there is nothing in the Act making obligatory on a director to hold shares 4. Even where the articles require a qualification, they may be amended so as to enable persons to be directors without any share qualification 5. Where the articles require a director to have a share qualification, the fact of a person becoming a director may be evidence of an agreement to take the qualification shares 6. But the prospectus is not a satisfactory proof of an agreement binding

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1. Burrows v. Matabele Gold Co. [1901] 2 Ch. 23 at p. 27.
2. Star Steam Laundry Co. v. Dukas [1913] W.N. 39, 29 T.L.R. 269.
3. Dey v. Pullinger Engineering Co. [1921] 1 K.B. 77, overruling Premier Industrial Bank v. Carlton Manufacturing Co. [1909] 1 K.B. 106.
4. Buckley 10th ed. p. 137 ; Peoples' Bank of N. India. [1933] L. 51, 140 I.C. 128.
5. Peoples Bank of N. India (supra).
6. Portal v. Emmens [1875] 1 C.P.D. 664 C.A ; Isaacs' case [1892] 2 Ch. 158 ; Hercynia Copper Co. [1894] 2 Ch. 403.

the company to allot and the director to accept such shares 1. In the last cited cases the director was held not liable either on the ground of agreement or on the ground of estoppel. Where the articles do not require such a qualification and the directors pass a resolution fixing the qualification, a director who is afterwards elected and act in that capacity does not thereby enter into an implied contract to take or hold the qualification shares 1. The prospectus is not a satisfactory proof of an agreement binding the company to allot and the directors to accept such shares 2. The articles can be altered under s. 20 *ante* so as to include non-shareholders as directors 1.

Where a person has been given shares or shares have been transferred to him as qualification for his directorship, he becomes a member of the company; and if such person hold out that he is a shareholder, he is estopped from denying that he is one (when the company goes into liquidation) on the ground that the transfer was a colourable transaction 3.

How they are to be taken.

Shares taken as a qualification need not be taken from the company, unless the director is named in the articles 4. It is enough if they are taken in the open market or from a friend. They even need not be shares for which the qualifying director has paid 5. Even beneficial ownership is not necessary 6. The registered holder of the shares, though he has transferred them to another is eligible 6. Shares taken as a present from the promoters is a breach of trust 7, and the director must account to the company for the amount 8; but he is nevertheless qualified 9. The bearer of a share warrant may be a member, if the articles so provide, but he shall not be qualified 10.

The holding of shares as one of several joint holders constitutes a good qualification 11 ,unless the articles require a sole holding 12. If the holding of shares is a condition precedent, the election of an unqualified director is void and he may by acting incur liabilities 13. But where it is not a condition precedent, he may act before he acquires the qualification shares 14. The ceasing to hold the qualification shares involves vacation of office 15.

Holding qualification shares in trust for promoters.

If a director accepts and holds the necessary shares in trust for the promoters, he will be liable to pay up the amount of his qualification 16. It is a misfeasance for the directors to hold such shares, as this puts them entirely at the mercy of the promoters. The measure of damages in such cases will be the highest value of the shares during their holding 16.

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1. De Ruvigni's case [1876] 5 Ch. D. 306; People's Bank of N. India (supra).
2. Peoples Bank of N. India (supra).
3. Mulk Raj v. Peoples Bank of N. India [1936] L. 480, 38 P.L.R. 816.
4. Brown's case [1873] 9 Ch. App. 102; see s. 84 (1), (i) and (ii); Carling's case [1875] 1 Ch. D. 115.
5. Nusservanji's case [1889] 13 Bom. 1.
6. Grundy v. Briggs [1910] 1 Ch. 444; Dunster's case [1894] 3Ch. 473; Dover Coalfields Extension Co. [1907] 2 Ch. 76, [1908] 1 Ch. 65; Pulbrook v. Richmond C. Mining Co. [1878] 9 Ch. D. 610.
7. Eden v. Ridsdale's Ry. Lamp Co. [1889] 23 Q.B.D. 368.
8. Hay's case [1875] 10 Ch. App. 593.
9. Carling's case [1875] 1 Ch. D. 115; Innes & Co. [1903] 2 Ch. 254; Hercynia Copper Co. [1894] 2 Ch. 403.
10. S. 46.
11. See note 6 (supra).
12. Dunster's case [1894] 3 Ch. 437 at p. 478.
13. International Cable Co. [1892] W.N. 34, 66 L. T. 253, 8 T.L.R. 316; Brown & Green Ltd. v. Hays [1920] 36 T.L.R. 330.
14. Hamley's case [1877] 5 Ch. D. 705.
15. Chandra Bhan v. Emp. [1914] 23 I.C. 748, 15 Cr. L.J. 380.
16. London & S. W. Canal Co. [1911] 1 Ch. 346.

The qualification must be obtained within two months after the appointment 1.

Not qualified before registration. Where transfers to the directors of their qualification shares were passed at a board meeting and they were forthwith elected as directors, though the transfers were actually registered on a subsequent date, it was held by Astbury J. that before their appointment the transferees had acquired an absolute right to registration, but they were not qualified persons before actual registration and their appointment as directors was invalid 2.

Increase of qualification. If after a director has acquired his qualification shares the qualification is increased, he does not vacate office for not acquiring it 3. A director acting without acquiring his qualification shares is however entitled to the remuneration prescribed in the articles 4.

Sub-s. (2). The High Court has no jurisdiction to take cognizance of and try an offence under this or any other section of the Act 5. See notes under s. 278.

When summary proceedings are commenced against a director under this subsection, he can apply to the Court which hears the case for relief under s. 281 *post* 6. See notes to that section.

Validity of acts of directors. 86. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification : Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid.

English Act. This section corresponds to s. 143 of the English Act of 1929 which runs thus : "The Acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification." In the Indian Act the word "manager" has been omitted and the proviso is new.

Section based on English decisions. The section seems to be based upon the principles of the decisions noted below 7, where it was held that if the articles so provide, the acts of the directors should be valid notwithstanding any irregularity subsequently discovered regarding their appointment 8. The resolutions of a general meeting convened by *de facto* directors are not invalidated by an irregularity in the constitution of the board 9.

Validity of acts of the directors. Acts *bona fide* done by a director are valid and this is so not only between the company and outsiders, but also between the company and its members 10. Where a person in good faith thinking himself to be a director so acts and signs a plaint on behalf of the company, he is regarded as a *de facto* director

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1. See London & S. W. Canal Co. [1911] 1 Ch. 346.
2. Spencer v. Kennedy [1926] Ch. 125.
3. Molineaux v. London &c. Insurance Co. [1902] 2 K.B. 589.
4. New Beeston Cycle Co. [1899] 1 Ch. 775.
5. Harish v. Kavindra [1936] A. 830 F.B., [1936] A.L.J. 1105.
6. In re Gilt Edge Safety Glass, Ltd. [1940] Ch. 495.
7. Dawson v. African Consolidated Co. [1898] 1 Ch. 6 ; British Asbestos Co. v. Boyd [1903] 2 Ch. 439 ; Southern Counties Bank v. Rider [1895] 73 L.T. 374 ; Briton Medical Assn. v. Jones [1889] 61 L.T. 384 ; Bridport Old Brewery Co. [1867] 2 Ch. App. 191 ; Harben v. Phillips [1883] 23 Ch. D. 14.
8. Channel Collieries Trust v. Dover &c. Railway Co. [1914] 2 Ch. 506 ; Boschoeck Proprietary Co. v. Fuke [1906] 1 Ch. 148.
9. Boschoeck Proprietary Co. v. Fuke [1906] 1 Ch. 148.
10. Ram Narain v. Ramkishen [1911] 10 I. C. 515.

and his act is validated by this section[1]. Where in the course of proceedings in Court a mere doubt is raised as to the validity of the position of such a director, such raising of doubt is not enough to "show" that his appointment was invalid. The appointment cannot be considered to be "shown" to be invalid until the Court has come to a definite decision on the point[1].

A director, who has been such from the formation of the company and has taken an active part in the management, will not be allowed to set up that the directors were illegally appointed, so that everything done by them was *ab initio* void or that notice of his own acts were not served upon him[2]. A defect in the formation of the board cannot adversely affect the right of a person who has no knowledge of the infirmity[3].

Where a company is shown to have accepted a certain person for many years as its director and has never on any occasion repudiated any of his acts as such, it is not open to a shareholder or any other person to challenge the appointment of such a director[4].

When a defect has been discovered, subsequent acts are not valid[5]. The section may however validate acts of the director not only as between the company and the outsiders, but as between the company and the members or between the members *inter se*[6]. While it validates the director's acts, it does not entitle him to the remuneration attached to the office[7].

It has been held by the Lahore High Court that a director invalidly appointed cannot, in the absence of a provision in the articles, bind the shareholders unless the defect is unknown at the time[8].

See reg. 94 of Table A *post* and notes thereunder.

Ineligibility of bankrupt to act as director.

86A. (1) *If any person being an undischarged insolvent acts as director or managing agent or manager of any company, he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand rupees or to both.*

(2) *In this section the expression "company" includes a company incorporated outside British India which has an established place of business within British India.*

See notes at the end of s. 86-I *post*.

Assignment of office by directors.

86B. *If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said*

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1. Ram Raghubir v. United Refineries Ltd. [1931] R. 139, 9 Rang. 56, 134 I. C. 737. This decision was passed after remand of the appeal [1930] R. 54 for finding facts necessary under s. 86.
2. Jones v. North Vancouver &c. Co [1910] A. C. 317.
3. Shivlal v. Tricomdas Mills Co. [1911] 14 Bom. L. R. 45.
4. Imperial O. S. & G. Mills v. Wazir Singh [1915] 31 I.C. 595.
5. Bridport Old Brewery Co. [1867] 2 Ch. App. 191 ; Harben v. Phillips (supra).
6. Dawson v. African Consolidated Co. (supra) ; British Asbestos Co. v. Boyd (supra) ; Channel Collieries Trust v. Dover Ry. Co. (supra).
7. Ex. p. Birkenshaw [1904] 2 K. B. 327.
8. Devi Ditta v. Standard Bank [1927] L. 797, 101 I.C. 568.

provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company:

Provided that the exercise by a director of a power to appoint an alternate or substitute director to act for him during an absence of not less than three months from the district in which meetings of the directors are ordinarily held, if done with the approval of the board of directors, shall not be deemed to be an assignment of office within the meaning of this section:

Provided always that any such alternate or substitute director shall ipso facto *vacate office if and when the appointor returns to the district in which meetings of the directors are ordinarily held.*

Explanation.—*For the purposes of the provisos to this section, the presidency-towns of Calcutta and Madras shall be deemed to be part of the 24-Parganas and Chingleput districts, respectively, and the presidenty-town of Bombay shall be deemed to be part of the Bombay Subarban and the Thana districts.*

See notes at the end of s. 86-I. post.

Avoidance of provisions relieving liability of directors.

86C. *Save as provided in this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:*

Provided that—

(a) in relation to any such provision which is in force at the date of the commencement of the Indian Companies (Amendment) Act, 1936, this section shall have effect only on the expiration of a period of six months from that date, and

(b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force, and

(c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 281 of this Act in which relief is granted to him by the Court.

This section has been inserted by the Amending Act XXII of 1936. It closely follows the provisions of s. 152 of the English Act of 1929. In the articles of association of many companies a provision is made for indemnifying directors. managers, officers and auditors. This section makes such provisions void except in cases where cl. (c) of the Proviso applies. If the provision is made in a separate contract it will also be void.

Indemnity. Where the articles provide for indemnity to directors for anything done by them, except where loss has been incurred as the result of wilful neglect or default on their part, inorder to be guilty of wilful negligence the director must not only be guilty of, but he must know that he is committing, a breach of duty or is recklessly careless in the matter. A director is justified in trusting the integrity, skill and competence of the officials unless he has grounds of suspicion. Insolvency of an official does not necessarily mean that he is dishonest **1**. As to what is a wilful default see notes to s. 25-A *ante*.

Proviso, cl. (a). The date of commencement of the Indian Companies (Amendment) Act XXII of 1936 is 15th January, 1937. See Introduction.

Loans of directors.

86D. (1) *No company shall make any loan or guarantee any loan made to a director of the company or to a firm of which such director is a partner [or to a private company of which such director is a member or director].*

(2) *In the event of any contravention of sub-section (1) any director of the company who is a party to such contravention shall be punishable with fine which may extend to five hundred rupees, and if default is made in repayment of the loan or in discharging the guarantee shall be liable jointly and severally for the amount unpaid.*

(3) *This section shall not apply to a private company (except a private company which is the subsidiary company of a public company) or to a banking company.*

This section has been inserted by the amending Act XXII of 1936. Sub-s. (1) prohibits companies to make or guarantee loans to their directors or the firms or private companies of the latter. Sub-s. (2) lays down the consequences of contravention of sub-s. (1). Sub-s. (3) makes the provisions of the section inapplicable to private companies other than subsidiary companies of public companies as well as to banking companies.

In Sub-s. 1 the words within square brackets have been substituted for the words "or to a private company of which such director is a director", by the Indian Companies (Amendment) Act II of 1938.

Director not to hold office of profit.

86E. *No director or firm of which such director is a partner or private company of which such director is a director shall without the consent of the company in general meeting hold any office of profit under the company except that of a managing director or manager or a legal or technical adviser or a banker:*

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1. Doss v. Connell [1937] M. 124. See also City Equitable Fire Insurance Co. [1925] 1 Ch. 407 (434).

Provided that nothing herein contained shall apply to a director elected or appointed before the commencement of the Indian Companies (Amendment) Act, 1936, in respect of any office of profit under the company held by him at the commencement of the said Act.

Explanation.—*For the purposes of this section the office of managing agent shall not be deemed to be an office of profit under the company.*

See notes at the end of s. 86-I *post*.

Sanction of directors necessary for certain contracts.

86F. *Except with the consent of the directors, a director of the company, or the firm of which he is a partner or any partner of such firm, or the private company of which he is a member or director, shall not enter into any contracts for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract or agreement for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.*

See notes at the end of s. 86-I *post*.

Removal of directors.

86G. (1) *The company may by extraordinary resolution remove any director, whose period of office is liable to determination at any time by retirement of directors in rotation, before the expiration of his period of office and may by ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected director. A director so removed shall not be reappointed a director by the board of directors.*

(2) *This section shall not apply to directors elected or appointed before the commencement of the Indian Companies (Amendment) Act, 1936.*

See notes at the end of s. 86-I *post*.

Restrictions on powers of directors.

86H. *The directors of a public company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting,—*

(*a*) *sell or dispose of the undertaking of the company ;*

(*b*) *remit any debt due by a director.*

Vacation of office of director.

86I. (1) *The office of a director shall be vacated if—*

(*a*) *he fails to obtain within the time specified in subsection* (1) *of section* [85], *or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment, or* *(b) he is found to be of unsound mind by a Court of competent jurisdiction, or*

(c) he is adjudged an insolvent, or

(d) he fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made, or

(e) he or any firm of which he is a partner or any private company of which he is a director without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker, or

(f) he absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months whichever is the longer without leave of absence from the board of directors, or

(g) he or any firm of which he is a partner or any private company of which he is a director accepts a loan, or guarantee from the company in contravention of section 86 D, or

(h) he acts in contravention of section 86 F.

(2) Nothing contained in this section shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on grounds additional to those specified in this section.

Amendment.

Sections 86A to 86I are new and have been inserted by the Companies (Amendment) Act, 1936, for the better control of directors. S. 86A follows s. 142 of the English Act of 1929. Section 86B follows s. 151 of the said Act in controlling the practice of directors assigning their responsibilities. S. 86C follows s. 152 of the said English Act. S. 86D prohibits the making of loans &c., to directors. S. 86E prevents directors from holding office of profit under the company. S. 86F requires sanction of the directors for a director entering into certain contracts. S. 86G provides for the removal of directors. S. 86H puts restrictions on powers of directors and s. 86-I includes in the Act provision for vacation of office by directors instead of leaving these matters to be provided for in the articles.

In cl. (a), sub-s. (1) of s. 86-I the figure "84" was a mistake which has been corrected by substituting for it the figure "85" by the amending Act II of 1938.

For the effects of these new sections, *viz.*, ss. 86A to 86I, see Introduction.

Register of directors, managers and managing agents.

87. *(1) Every company shall keep at its registered office a register of its directors, managers and managing agents containing with respect to each of them the following particulars, that is to say:—*

(a) in the case of an individual, his present name in full, any former name or surname in full, his usual residential address, his nationality and, if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, and if he

holds any other directorship or directorships the particulars of such directorship or directorships ;

(b) in the case of a corporation, its corporate name and registered or principal office; and the full name, address and nationality of each of its directors ; and

(c) in the case of a firm, the full name, address and nationality of each partner, and the date on which each became a partner.

(2) The company shall within the periods respectively mentioned in this sub-section send to the registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managers or managing agents or in any of the particulars contained in the register.

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one rupee or such less sum as the company may impose for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with sub-section (1) or sub-section (2) of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of fifty rupees.

(5) In the case of any such refusal, the Court on application made by the person to whom inspection has been refused and upon notice to the company may by order direct an immediate inspection of the register.

By the Companies (Amendment) Act, 1936, this section has been substituted for the original s. 87. It follows the provisions of s. 144 of the English Act of 1929. As to the effect of this new section see Introduction. The old s. 87 was as follows :

List of directors to be sent to registrar.

87. (1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors, and file with the registrar a copy thereof, and from time to time file with the registrar notice of any change among its directors or managers.

(2) If default is made in complying with this section, the company shall be liable to a fine not exceeding fifty rupees for every day during

which the default continues; and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

Although sub-s. (1) of the old s. 87 contained such vague expression as "from time to time," the period of 30 days prescribed in form XXVI, of the Company Rules, 1914 (repealed), was not meant to supplement it and was not mandatory; hence no offence was committed if a company failed to file notice of the change among directors within 30 days from the date of occurence [1]. The company was entitled to the time until a new director had been appointed [2]. But now a definite time limit has been fixed by sub-s. (2).

Meaning of "manager."

Unless a person is in charge of the entire business of a company, he cannot be deemed to be the "manager" thereof. A person in charge of a branch bank therefore does not come within the purview of the term "manager" as used in this section [3].

Outsiders not bound to search registers.

Outsiders are not affected with notice of all that is contained in the register of directors kept under this section [4]. Notwithstanding the provisions of this section, the appointment of a director still remains part of "the indoor management" of the company, and outsiders are not bound to search the register for ascertaining whether a person acting as a director for some length of time is also a director *de jure* [4].

For form of the register, see Form No. XII, App. E.

Managing Agents.

Duration of appointment of managing agent.

87A. *(1) No managing agent shall, after the commencement of the Indian Companies (Amendment) Act, 1936, be appointed to hold office for a term of more than twenty years at a time.*

(2) Notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company a managing agent of a company appointed before the commencement of the Indian Companies (Amendment) Act, 1936, shall not continue to hold office after the expiry of twenty years from the commencement of the said Act unless then reappointed thereto or unless he has been reappointed thereto before the expiry of the said twenty years.

(3) A managing agent whose office is terminated by virtue of the provisions of sub-section (2) shall upon such termination be entitled to a charge upon the assets of the company by way of indemnity for all liabilities or obligations properly incurred by the managing agent on behalf of the company subject to existing charges and encumbrances, if any.

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1. Lakshmana v. Emp. [1932] M. 497, 35 M.L.W. 661, following the decision of Cuming J. in Kumud v. Emp. [1931] C. 265, 58 Cal. 882, 35 C. W. N. 227, 32 Cr. L. J. 778, 131 I. C. 592.
2. Kumud v. Emp. (supra).
3. Basant v. Emp. [1917] 19 Cr. L.J. 215, 43 I.C. 791.
4. Pudumjee & Co. v. Moos [1926] B. 28, 27 Bom. L.R. 1218, following Mahony v. East Holyford Mining Co. [1875] 7 H.L. 869; T.R. Pratt & Co. (Bombay) Ltd. v. E. D. Sassoon & Co. Ltd. [1936] B. 62, 37 Bom. L.R. 978, 161 I.C. 126.

(4) *The termination of the office of a managing agent by virtue of the provisions of sub-section* (2) *shall not take effect until all moneys payable to the managing agent for loans made to or remuneration due up to the date of such termination from the company are paid.*

(5) *Nothing in this section shall apply to a private company which is not the subsidiary company of a public company.*

Conditions applicable to managing agents.

87B. *Notwithstanding anything to the contrary contained in the articles of the company or in any agreement with the company—*

(*a*) *a company may, by resolution passed at a general meeting of which notice has been given to the managing agent in the same manner as to members of the company, remove a managing agent if he is convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code, and being under the provisions of the Code of Criminal Procedure, 1898, non-bailable; and for the purposes of this clause, where the managing agent is a firm or company an offence committed by a member of such firm or a director of or an officer holding a general power of attorney from such company shall be deemed to be an offence committed by such firm or company:*

Provided that a managing agent shall not be liable to be removed under the provisions hereof if the offending member, director or officer as aforesaid is expelled or dismissed by the managing agent within thirty days from the date of his conviction or if his conviction is set aside on appeal;

(*b*) *the office of a managing agent shall be vacated if he is adjudged insolvent;*

(*c*) *a transfer of his office by a managing agent shall be void unless approved by the company in general meeting:*

Provided that in the case of a managing agent's firm a change in the partners thereof shall not be deemed to operate as a transfer of the office of managing agent, so long as one of the original partners shall continue to be partner of the managing agent's firm. For the purpose of this proviso 'original partners' shall mean, in the case of managing agents appointed before the commencement of the Indian Companies (Amendment) Act, 1936, partners who were partners at the date of the commencement of the said Act, and in the case of managing agents appointed after the commencement of the said Act, partners who were partners at the date of the appointment;

(*d*) *a charge or assignment of his remuneration or any part* *thereof effected by a managing agent shall be void as against the company;*

(e) *if a company is wound up either by the Court or voluntarily, any contract of management made with a managing agent shall be thereupon determined without prejudice however, to the right of the managing agent to recover any moneys recoverable by the managing agent from the company: Provided that where the Court finds that the winding up is due to the negligence or default of the managing agent himself the managing agent shall not be entitled to receive any compensation for the premature termination of his contract of management; and*

(*f*) *the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent's contract of management made after the commencement of the Indian Companies (Amendment) Act,* 1936, *shall not be valid unless approved by the company by a resolution at a general meeting of the company notwithstanding anything to the contrary in section 86E:*

Provided that nothing herein contained shall apply to the appointment of a company's first managing agent made prior to the issue of the prospectus or statement in lieu of prospectus where the terms of the appointment of such managing agent are there set forth.

Cl. (d). The object of the restriction imposed by this clause is to prevent the managing agent from making a voluntary charge or assignment of his remuneration to the detriment of the company. This does not disentitle a creditor to recover his debt by attaching the remuneration to which the managing agent is entitled. A restraint on voluntary alienation does not bar a compulsory sale at the instance of a creditor [1].

Remuneration of managing agent.

87C. (1) *Where any company appoints a managing agent after the commencement of the Indian Companies (Amendment) Act,* 1936, *the remuneration of the managing agent shall be a sum based on a fixed percentage of the net annual profits of the company, with provision for a minimum payment in the case of absence of or inadequacy of profits, together with an office allowance to be defined in the agreement of management.*

(2) *Any stipulation for remuneration additional to or in any other form than the remuneration specified in sub-section* (1) *shall not be binding on the company unless sanctioned by a special resolution of the company.*

(3) *For the purposes of this section 'net profits' means the profits of the company calculated after allowing for all the usual working charges, interest on loans and advances, repairs and outgoings, depreciation, bounties or subsidies received from* [*any Govern-*

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[1] Pursattamdas v. Baijnath Prosad [1941] C. 240.

ment] or from a public body, profits by way of premium on shares sold, profits on sale proceeds of forfeited shares, or profits from the sale of the whole or part of the undertaking of the company but without any deduction in respect of income-tax or super-tax, or any other tax or duty on income or revenue or for expenditure by way of interest on debentures or otherwise on capital account or on account of any sum which may be set aside in each year out of the profits for reserve or any other special fund.

(4) *This section shall not apply to a private company except a private company which is the subsidiary company of a public company or to any company whose principal business is the business of insurance.*

This section has been inserted by the amending Act XXII of 1936. In sub-s. (3) the words within square brackets have heen substituted for the word "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

Sub-s. (1) provides for remuneration of the managing agents appointed by a company after the commencement of the amending Act XXII of 1936, i.e., after 15th January, 1937 (see Introduction) on the basis of a fixed percentage of the net annual poofits of the company with provision for a minimum payment in the case of absence or inadequacy of profits together with an office allowance to be defined in the agreement of management. Sub-s. (2) provides that stipulation for any additional remuneration will not be binding on the company unless sanctioned by a special resoluction. Sub-s. (3) lays down the meaning of "net profits" for the purposes of this section. Sub-s. (4) makes the provisions of this section inapplicable to private companies other than a subsidiary company of a public company as well as to insurance companies.

Loans to managing agents.

87D. (1) *No company shall make to a managing agent of the company or to any partner of the firm, if the managing agent is a firm, [or to any member or director of the private company], if the managing agent is a private company, any loan out of moneys of the company or guarantee any loan made to a managing agent.*

(2) *Nothing contained in this section shall apply to any credit held by a managing agent in a current account maintained subject to limits previously approved by the board of directors by the company with the managing agent for the purposes of the company's business.*

(3) *In the event of any contravention of sub-section* (1) *any director of the company who is a party to the making of the loan or giving of the guarantee shall be punishable with fine which may extend to five hundred rupees, and if default is made in repayment of the loan or discharging the guarantee shall be liable jointly and severally for the amount unpaid.*

(4) *Nothing in this section shall apply to a private company*

except a private company which is the subsidiary company of a public company.

(5) *Except with the consent of three-fourths of the directors present and entitled to vote on the resolution, a managing agent of the company, or the firm of which he is a partner, or any partner of such firm, or, if the managing agent is a private company, a member or director thereof, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.*

In sub-s. (1) of this section the words within square brackets have been substituted for the words "or to any director of the private company" by the Indian Companies (Amendment) Act II of 1938.

Loans to or by companies under the same management.

87E. (1) *No company incorporated under this Act after the commencement of the Indian Companies (Amendment) Act, 1936, which is under the management of a managing agent shall make any loan to or guarantee any loan made to any company under management by the same managing agent, and no company shall after the expiry of six months from the commencement of the said Act except by way of renewal of an existing loan or guarantee given make any loan to or guarantee any loan made to any such company :*

Provided that nothing herein contained shall apply to loans made or guarantees given by a company to or on behalf of a company under its own management or loans made by or to a company to or by a subsidiary company thereof or to guarantees given by a company on behalf of a subsidiary company thereof.

(2) *In the event of any contravention of the provisions of this section, any director or officer of the company making the loan or giving the guarantee who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees and shall be jointly and severally liable for any loss incurred by the company in respect of such loan or guarantee.*

Purchase by company of shares of company under same managing agent.

87F. *A company other than an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities, shall not purchase shares or debentures of any company under management by the same managing agent, unless the purchase has been previously approved by a unanimous decision of the board of directors of the purchasing company.*

Restriction on managing agent's powers of management.

87G. A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or, except with the authority of the directors, and within the limits fixed by them, a power to invest the funds of the company, and any delegation of any such power by a company to a managing agent shall be void.

Where a managing agent who is not authorized to borrow has borrowed money which is not necessary and neither *bona fide* nor for benefit of the company, the company is not liable for the amount borrowed 1.

Managing agent not to engage in business competing with the business of managed company.

87H. A managing agent shall not on his own account engage in any business which is of the same nature as and directly competes with the business carried on by a company under his management or by a subsidiary company of such company.

Limit on number of directors appointed by managing agent.

87I. Notwithstanding anything contained in the articles of a company other than a private company the directors, if any, appointed by the managing agent shall not exceed in number one-third of the whole number of directors.

Amendment.

Sections 87A to 87I have been inserted by the Companiee (Amendment), Act, 1936, for the purpose of controlling the appointments, powers and actions of the managing agents. For a discussion of these new provisions see Introduction.

Contracts.

Form of contracts.

88. (1) Contracts on behalf of a company may be made as follows (that is to say) :—

(*i*) any contract which, if made between private persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged ;

(*ii*) any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

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1. Equity Insurance Co. v. Dinshaw & Co. [1940] O. 202, 15 Luck. 515, [1940] O.W.N. 285.

(2) All contracts made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto, their heirs, or legal representatives, as the case may be.

Contracts made by manager.

A company which has appointed a manager of its business is bound by contracts made by him in the usual course of business, although sufficient powers have not been delegated to him [1]. Where goods are supplied to the orders of unauthorized persons, the company is liable if the goods are received and used for the purposes of its trade (see the last case). Where in a suit to enforce a contract entered into by the managing agent, the plaintiff joins both the managing agent and the principal, only one of them can be held liable ; but if the agent stands alone as agent for an undisclosed principal both would be liable [2].

Tort.

But as regards tort the position is different. "In a sense, every tort is *ultra vires*, for no corporation is formed for the purpose of committing wrongs ; but a company is not thereby exempted from liability *ex delicto*. It is liable for torts such as for instance malicious prosecution, libel or fraudulent misrepresentation committed by its agents, although no express command or privity of the company is proved. It may sometimes be liable for the acts of its liquidators" [3].

Power to borrow.

A trading or commercial company, but not a literary or scientific society, has an implied power to borrow and to mortgage or charge all or any part of its property [4], and the contract need not be under seal [5]. Where the chairman of a company as principal officer, while carrying on business of the company, executed a declaration creating a lien on the company's property in respect of a loan sanctioned by the board, but the articles of association were silent as to the authority of the person entering into agreement on behalf of the company, it was held that the chairman had implied authority to execute the declaration [6]. Any other company may also borrow, if so authorized by its memorandum [7]. If there is no power to borrow, a loan is irrecoverable as a debt, and any security given for the debt is void [8]. But where the lender is a company without power to lend and the borrower is a company without power to borrow, the latter by borrowing is a party to a breach of trust, and the money lent is recoverable [9].

An overdraft at a company's bankers is a loan [10].

Ultra vires payment.

A payment which is *ultra vires* is a breach of trust and the directors or other persons making the payment are liable to make good the money [11].

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1. Smith v. Hull Gas Co. [1852] 11 C. B. 897 ; see also Royal British Bank v. Turquand [1856] 6 E. & B. 327 ; Overend, Gurney & Co. [1869] 4 Ch. App. 460.
2. Pattinson v. Bindhya Debi [1933] P. 196, 12 Pat. 216.
3. Hals. pp. 309-10 and the cases collected there.
4. Re Badger, Mansell v. Cobham [1905] 1 Ch. 568.
5. South of Ireland Colliery Co. v. Waddle [1868] L. R. 3. C. P. 463, on appeal 4 C. P. 617 ; Lawford v. Billericay &c. Council [1903] 1 K. B. 772.
6. Indus Film Corpn. [1939] S. 100.
7. Re Badger, Mansell v. Cobham [1905] 1 Ch. 568.
8. Troup's case [1860] 29 Beav. 353.
9. Ernest v. Croysdill [1860] 2 De G. F. & J. 175 ; Moxham v. Grant [1900] 1 Q. B. 88 ; Hardy v. Metropolitan Land Co. [1872] 7 Ch. App. 427.
10. Cunliffe Brooks & Co. v. Blackburn &c. Society [1884] 9 App. Cas. 857.
11. Re Sharpe [1892] 1 Ch. 154.

Where borrowing power is limited.

Where the borrowing powers of a company are limited, any security given for any amount lent to the company beyond the limit is void, even though the limit is subsequently increased [1]. Where the borrowing powers of directors are limited to a certain amount, they cannot borrow beyond that amount, so as to bind the company [1]. If however the borrowing is not in excess of the powers of the company, it may be ratified by the company in a general meeting [2] by an ordinary resolution [3].

Ultra vires contracts.

It may be generally stated that a contract *ultra vires* the company is wholly void and cannot be enforced [4]; and a contract not *ultra vires* the company, but *ultra vires* the directors, may be ratified by the shareholders [5]. But if the company ratifies the contract without knowledge of the fact that it was entered into by the directors *ultra vires*, the company will not be bound by it [6]. In England a contract made before the incorporation of a company by some person professing to act on its behalf cannot be ratified by the company after incorporation [7]. The Indian law is different (see notes to s. 23). There is nothing however to prevent the company from entering into a new contract to carry into effect the terms of the pre-incorporation contract [8]. Mere acting on the old contract does not make it binding on the company [9], not taking benefit under the same [10]. A public company cannot make a binding contract until it is entitled to commence business complying with the provisions of s. 103.

Manager's powers.

If the directors appoint a manager or other official, he may be given authority by some resolution of the board or by an instrument under the company's seal [11]. The mere appointment of a manager under a power for that purpose, will only operate as a delegation to such manager of the ordinary commercial business of the company [12].

Contract may be made without seal.

This section enables a company, as a general rule, to make a contract without affixing the company's common seal thereto, as is in some cases under the English Act and was the case under the Indian Act of 1882, s. 67. If a document under seal is not necessary, then a mere defect in the manner of affixing the seal will not render the document invalid [13].

As to the seal, see notes to s. 29 and reg. 76 of Table A.

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[1] Fountaine v. Carmarthan Ry. Co. [1868] 5 Eq. 316.

[2] Irvine v. Union Bank of Australia [1877] 2 App. Cas. 366 P. C.

[3] Grant v. U. K. S. Rys. Co. [1888] 40 Ch. D. 135.

[4] Ashbury Ry. Carriage Co. v. Riche [1875] 7 H. L. 653; Attorney General v. Great Eastern Ry. Co. [1880] 5 App. Cas. 473; London County Council v. A. G. [1902] A. C. 165.

[5] Grant v. U. K. S. Rys. Co. [1888] 40 Ch. D. 135.

[6] District Board Kistna v. Kenern Lakshmayya [1938] M. 227, [1938] 1 M.L.J. 391.

[7] Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co. [1902] 1 Ch. 146; Natal Land &c. Co. v. Pauline Colliery Syndicate [1904] A. C. 120 P. C.; North Sydney &c. Co. v. Higgins [1899] A. C. 263 P. C.

[8] Howard v. Patent Ivory Co. [1888] 38 Ch. D. 156; Natal Land &c. Co. v. Pauline C. Syndicate (supra).

[9] Northumberland Avenue Hotel Co. [1886] 33 Ch. D. 16.

[10] National Motor Mail Coach Co., Clinton's Claim [1908] 2 Ch. 515, overruling the decision in English & Colonial Produce Co. [1906] 2 Ch. 435.

[11] Beer v. London & Paris Hotel Co. [1875] 20 Eq. 412; Land Credit Co. [1869] 4 Ch. App. 460.

[12] Cartmell's case [1874] 9 Ch. App. 691 at p. 696.

[13] Dehra-Dun Mussoorie E. Tramway Co. v. Jagamandar [1932] A. 141, [1931] A. L. J. 1038, 134 I. C. 244.

Where company is undisclosed principal.

If an agent of a company other than a private company enters into a contract in which the company is the undisclosed principal, he must make a memorandum in writing of the terms of the contract and other particulars and file it in the office of the company, and the said memorandum shall be laid before the directors at the next board meeting 1.

Termination of contract.

There is no ground in law for saying that where a written contract has been made which required a written notice on either side before it could be terminated, it cannot be terminated by word of mouth by mutual agreement between the parties; and it makes no difference if the contract of service is one between a company and its directors 2.

Once the rights of parties dealing with a company have become fixed by a contract, the company cannot by a resolution subsequently passed by it alter those rights 3.

Bills of exchange and promissory notes.

89. A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority, express or implied.

Power of company to accept bills &c.

Whether a company can make, accept, indorse or issue bills of exchange, promissory notes and other negotiable instruments depends on its objects as stated in the memorandum of association. It cannot do any such thing unless it has express or implied power under the memorandum 4. Where the memorandum of association stated that one of the objects of the company was to make promissory notes and in the articles power was given to the managing agents to make contracts and sign receipts on behalf of the company, it was held that the managing agent had no power to make promissory notes on behalf of the company and that the company was not liable on such notes 5.

Implied power to borrow.

In the case of a trading company there is an implied power to borrow 6 and accept and issue bills and notes; and there are other commercial concerns which may also have an implied power 7, but a railway company cannot accept or indorse bills of exchange 7.

Company's liability on bills &c. and endorsements.

The question as to the liability of a company on a particular endorsement on a bill is in every case one of construction. If on the true construction the bill or note is that of the company, it will be liable upon the bill, and not the individuals whose names appear on it. On the other hand if on the true construction the bill or note is not the bill or note of the company, the persons whose names are on it will be liable whether they intended to

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1. S. 91 D. 2. Latchford P. Cinema v. Ennion [1931] 145 L. T. 672.
3. Tanjore Life Assurance Co v. Kuppana Rau [1920] 43 Mad. 333; Conjeeveram Hodgsonpet v. Kandaswamy [1915] 28 I. C. 847. See also Bailey v. British Equitable Assurance Co. [1904] 1 Ch. 374 and Peare Lal v. Dewan Singh [1930] A. 661, [1930] A. L. J. 777.
4. Peruvian Rys. Co. v. Thames &c. Co. [1867] 2 Ch. App 617; Bateman v. Mid-Wales Ry. Co. [1866] L.R.I. C.P. 499; see also Byles on Bills 17th ed. p. 84.
5. Jhandu Mal v. Dehra-Dun Mussoorie E. Tramway Co. [1930] A. 778, 52 All. 883, [1930] A. L. J. 1052, 128 I. C. 758.
6. Bank of Australasia v. Breillat [1847] 6 Moo. P. C. C. 195.
7. Dickinson v. Valpy [1829] 10 B. & C. 128; Steele v. Harmer [1845] 14 M. & W. 831; Bateman v. Mid-Wales Ry. Co. [1886] L. R. I. C. P. 499; see Bramah v. Roberts [1837] 3 Bing. N. C. 963.

be so or not 1. It is of the utmost importance that the name of a person or firm to be charged upon a negotiable instrument should be clearly stated on the face or back of the document, so that the responsibility is made plain and can be instantly recognized 2. In order to make the company liable on a bill or note it must appear on the face of such bill or note that it was intended to be drawn, accepted or made on behalf of the company 3.

Where the endorsement was "M. & Sons, Managing Agents of L. A. Co. Ltd.", it was held by Sanderson C. J. and Rankin J., that it would not necessarily be clear to any one that the responsibility of L. A. Co. Ltd. was involved, and that L. A. Co. Ltd. was not therefore liable 1. The words "managing director" or "director" may be treated as words of description only 4. In such cases the Court is entitled to look at the surrounding circumstances under which the bill is signed 4. "We the directors of X.Y. & Co. do promise to pay" &c. signed by the directors will make them personally liable 5.

If the directors of a company, which has no power to accept bills, purport to accept them on behalf of the company, they will be personally liable 6.

Indorsement "per pro."

Where an agent accepts or indorses '*per pro.*' the taker of the bill or note so accepted or indorsed is bound to inquire as to the extent of the agent's authority. Where the agent has such authority his abuse of it does not affect a *bona fide* purchaser for value 7.

Personal liability of agents.

If the company is liable on a bill, its authorized agents are not personally liable, although using words apparently sufficient for that purpose, such as "I promise" or "we promise" 8, provided that the signatures are expressed to be on behalf of a principal or in a representative capacity 9. Words describing them as being officers of the company may not themselves exempt them from the liability 10 ; but where the name of the signatory appears as a director, or managing director, he is not personally liable 8. Directors are however personally liable on a bill which does not state the name of the company correctly 11.

Managing director's power.

If the managing director could have been authorized under the articles to draw and accept a bill of exchange, a holder in due course is entitled to assume that he had authority and the holder is not bound to inquire into the internal management of the company or to prove an actual authority 12.

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1. Sreelal v. Lister Antiseptic Dressing Co. [1925] 52 Cal. 802, 29 C. W. N. 828, following Chapman v. Smethurst [1909] 1 K. B. 927 C. A. See also Jhandu Mal v. Dehra-Dun Mussoorie E. Tramway Co. [1930] A 778, 52 All. 883.
2. Sadasukh v. Kissen Pershad [1918] 46 Cal. 663 P.C., 23 C. W. N. 937, 29 C. L. J. 340 P C.
3. New Fleming Spinning & Weaving Co. [1880] 4 Bom. 275.
4. Elliot v. Bax-Ironside [1925] 2 K. B. 301.
5. Dutton v. Marsh [1871] 6 Q. B. 361.
6. West London Commercial Bank v. Kitson [1884] 13 Q.B.D. 360.
7. Bryant v. La Banque du Peuple [1893] A. C. 170.
8. Chapman v. Smethurst (supra).
9. Alexander v. Sizer [1869] L.R. 4 Exch. 102.
10. Courtauld v. Saunders [1869] 16 L.T. 562 C.A.
11. Atkins & Co. v. Wardle [1889] 61 L.T. 23, on appeal 5 T.L.R. 734 ; Nassau Steam Press v. Tyler [1894] 70 L.T. 376.
12. Dey v. Pullinger Engineering Co. [1921] 1 K.B. 77 [Premier Industrial Bank v. Carlton Mnfg. Co. (1909) 1 K.B. 106 not followed]. But see Houghton & Co. v. Nothard, Lowe & Wills [1927] 1 K.B. 246 C.A.

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Manager's power. The manager of a bank has authority to make [illegible] transfer of a negotiable instrument on behalf of the bank [1].

Power of delegation. In a suit by the holders of a bill of exchange in due course it was held following *Houghton & Co. v. Nothard, Lowe & Wills* [2] that as it did not appear that the plaintiff knew of the *existence of the* power of delegation contained in the defendant's articles of association, they were not entitled to rely upon its supposed exercise [3]. It was further held that the bills of exchange were forgeries and, therefore, applying *Ruben* v. *Great Fingall Consolidated* [4], it was held that the plaintiffs could not in any event invoke the principle that they would not be bound to enquire into the indoor management of the defendant company [3].

As to the mode in which authority to accept bills may be given, see *Overend Gurney & Co.* [5].

Where a resolution of the directors required bills of exchange to be signed by a director and the secretary, it was held that a bill signed by a director only was not binding on the company, even in the hands of a holder who did not know of the resolution [6].

Party to suit. Where a promissory note, executed in favour of a bank which went into liquidation, was endorsed in favour of another bank, the latter in a suit on the promissory note might properly ask for permission to make the bank in liquidation a party to the suit [7].

90. **Execution of deeds.** A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place *either in or outside British India*; and every deed signed by such attorney, on behalf of the company, and under his seal, where sealing is required, shall bind the company, and have the same effect as if it were under its common seal.

By the Companies (Amendment) Act, 1936, the words in italics have been substituted for the words "not situate in British India."

91. **Power for company to have official seal for use abroad.** (1) A company whose objects require or comprise the transaction of business beyond the limits of British India may, if authorised by its articles, have for use in any territory, district or place not situate in British India, an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the

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1. Hindustan Assurance Society v. Gurdit Singh [1924] L. 462, 6 L.L.J. 183, 80 I. C. 741.
2. [1927] 1 K. B. 246 C.A.
3. Kreditbank Cassel &c. v. Schenkers Ltd. [1927] 1 K. B. 826 C. A.
4. [1906] A. C. 439.
5. [1869] 4 Ch. App. 460.
6. Premier Industrial Bank v. Carlton Manufacturing Co. [1909] 1 K. B. 106.
7. Punjab Co-operative Bank v. Lyallpur Bank [1934] L. 328, 150 I. C. 670.

purpose in any territory, district or place not situate in British India to affix the same to any deed or other document to which the company is party in that territory, district or place.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Disclosure of interest by director.

91A. (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement :

Provided that a general notice that a director is a *director or a member of any specified company or is a member of any specified firm*, and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this sub-section and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.

(3) *A register shall be kept by the company in which shall be entered particulars of all contracts or arrangements to which sub-section (1) applies, and which shall be open to inspection by any member of the company at the registered office of the company during business hours.*

(4) *Every officer of the company who knowingly and wilfully acts in contravention of the provisions of sub-section (3) shall be liable to a fine not exceeding five hundred rupees.*

This section was inserted by the amending Act XI of 1914.

Amendment.

By the Companies (Amendment) Act, 1936, in sub-s. (1) the words in italics have been substituted for the words "member of any specified firm or company" after the words "a director is a." By the same Act the new sub-sections (3) and (4) have been added. For the effect of the amendments see Introduction.

Principle.

This as well as ss. 91 B, 91 C and 91 D did not occur in the English Act of 1908. They were introduced in the present Act by the amending Act No. 11 of 1914. These sections are founded upon the principle that "a director is precluded from dealing on behalf of the company with himself and from entering into engagements in which he has a personal interest conflicting, or which possibly may conflict, with the interest of those whom he is bound by fiduciary duty to protect, and this rule is as applicable to the case of one of several directors as to a managing or a sole director" [1]. A director is in a fiduciary position towards the company, and if he makes any profit on account of transactions of business when he is acting for the company, he must account for them to the company [2]. So, if acting for himself, he proposes to the company a contract from the execution of which he will derive a profit, that profit belongs to the company [2].

"The liability of a director", observed Lord Blaneshburgh in a recent case, "in respect of profits made by him from a contract in which his company is also concerned is one thing: his liability, if any there be, in respect of his profits from a contract in which the company has no interest at all is quite another. In the first case, unless by the company's regulations the director is permitted, subject to or without conditions, to retain his profit, he must account for it to the company. In the second case the company has no concern in his profit and cannot make him accountable for it unless it appears—this is the essential qualification—that in earning that profit he has made use either of the property of the company or of some confidential information which has come to him as a director of the company" [3].

Disclosure of interest.

Sub-s. (1). The contracts contemplated by this sub-section in respect of which every director must disclose his interest, if any, on pain of the penalty provided for in sub-s. (2) are not only contracts entered into at a meeting of directors, but all contracts entered into at such meeting or otherwise [4]. Such contracts include small purchases from another firm in which the purchasing director is interested, the only difference being that the method of disclosure is that laid down in the proviso to sub-s. (1) [4]. A letter addressed to the chairman of the board of directors signed by him with the remark "noted" and included in one of the files of the directors' correspondence, but not referred to in the minutes of any meeting, does not, of itself, prove disclosure as required by this section [4].

Nature of interest.

The interest which a director is bound to disclose is any interest which conflicts with his duty to the company. Whether the interest is of such a nature or not must be a question of fact in each case and decided on a reference to the wording of each statute [5]. The interest requiring disclosure is not only a pecuniary interest, but every relation which can reasonably be regarded as capable of affecting the directors' decision 1. Where the real nature of the interest is known to all the directors, there is no necessity to make a formal disclosure 1.

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[1] North-West Transportation Co. v. Beatty [1887] 12 App. Cas. 589; see also Boulton Bros. v. New Victoria Mills [1929] A. 87, 26 A. L. J. 1119.

[2] Imperial M. C. Association v. Coleman [1873] 6 H. L. 189.

[3] Bell v. Lever Brothers Ltd. [1932] A. C. 161 at p. 194.

[4] Rabindra v. Emperor [1938] 42 C. W. N. 533.

[5] Venkata Chalapathi v. Guntur Cotton &c. Mills [1929] M. 353, 115 I. C. 486 [see Guntur Cotton &c. Mills v. Venkata Chalapathi (1932) P. C. 244 in which an appeal from this case was dismissed].

Rule of equity will also apply.

Where the articles declared that if a director had any interest in a contract proposed for acceptance by the company, he should declare his interest or his place as director should be vacated and that having declared it he should not vote on the proposal, it was held *first*, that the expression "declare his interest" meant declare the nature of his interest 2, and that the words were not satisfied by a mere declaration that he had an interest in the matter, and *secondly* that the vacating of the seat would not prevent the contract itself from being treated as one made for the benefit of the company; for the rule of equity would apply to such a case in addition to the penalty specially mentioned by the articles 2 (of last page).

If the words are "if he is concerned in any contract", the director will be disqualified even though he could not make any profit out of the contract 3.

Directors holding shares in any other company.

Unless and so far as authorized by the articles, the board cannot make a binding contract with any other company in which a member of the quorum holds shares 4. This rule applies whether the shares are held in trust or beneficially. If the second company has notice of the irregularity, the first company may obtain rescission of the transaction, even after completion, provided that rescission is still possible 4.

Where vendors become directors.

Where vendors become directors, they usually enter into agreements to manage for a term of years and agree not to trade in competition with the company. If the company wrongfully discharges such a manager either directly or by going into liquidation, he is freed from his covenant and may at once start a competing business 5.

Terms of articles must be strictly complied with.

Modern articles usually authorize directors to make contracts in which they are personally interested, on disclosing their interest to their fellow-directors. Such a clause is valid under the English law but the terms must be strictly complied with 6, and the disclosure must be to directors who are independent and not to other directors who are equally interested in the contract in question 7.

Breach of ss. 91 A, 91 B and 91 C.

A Breach of the provisions of ss. 91 A, 91 B and 91 C by which a director is bound to disclose any interest he has personally in a transaction that the company is entering into does not *ipso facto* render the transaction void 8.

Sub-s. (2). Where the managing director of a book-selling company makes a small purchase of books from another concern in which he is interested and does not disclose his interest as required by this section, he is guilty under sub-s. (2) 9.

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1. Venkata Chalapathi v. Guntur Cotton &c. Mills [1929] M. 353, 115 I. C. 486 [see Guntur Cotton &c. Mills v. Venkata Chalapathi (1932) P. C. 244 in which an appeal from this case was dismissed].
2. Turnbull v. West Riding Athletic Club [1894] W.N. 4, 70 L. T. 92.
3. Star Steam Laundry Co. v. Dukas [1913] W. N. 39, 108 L. T. 367.
4. Transvaal Lands Co. v. New Belgian L. & D. Co. [1914] 2 Ch. 488.
5. General Bill-posting Co. v. Atkinson [1909] A.C. 118; Measures Brothers Ltd. v. Measures [1910] 2 Ch. 336.
6. Toms v. Cinema Trust Co. [1915] W. N. 29; Costa Rica Ry. Co. v. Forwood [1900] 1 Ch. 756, on appeal [1901] 1 Ch. 746.
7. Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate [1899] 2 Ch. 392; Gluckstein v. Barnes [1900] A. C. 240.
8. Venkata Chalapathi v. Guntur Cotton &c. Mills (supra).
9. Rabindra v. Emperor (supra).

Prohibition of voting by interested director.

91B. (1) No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested *nor shall his presence count for the purpose of forming a quorum at the time of any such vote* ; and if he does so vote his vote shall not be counted :

Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine nor exceeding one thousand rupees.

(3) This section shall not apply to a private company :

Provided that where a private company is a subsidiary company of a public company, this section shall apply to all contracts or arrangements made on behalf of the subsidiary company with any person other than the holding company.

Amendment.

This section was inserted by the amending Act XI of 1914, and sub-s. (3) was added by the amending Act XLII of 1920. By the Companies (Amendment) Act, 1936, the words in italics have been inserted in sub-s. (1), and the new proviso (in italics) have been added to sub-s. (3). For the effect of these amendments see Introduction.

Application.

Sub-s. (1). Where a director has an interest as shareholder in another company, or is in a fiduciary position towards and owes a duty to another company which is proposing to enter into a transaction with the company of which he is the director, he comes within the rule laid down in this section and the transaction is voidable at the instance of the company with which it is entered into. He has a personal interest in the matter and owes a duty which conflicts with his duty to the company of which he is the director. It is immaterial whether the conflicting interest belongs to him beneficially or as a trustee for others [1].

Voting on the question at general meeting.

Unless specially authorized by the articles, directors cannot make contracts with the company either on their own behalf or on behalf of any company or firm, without the sanction of the company in general meeting [2]. This does not necessarily prevent them from voting on the same question at a meeting of shareholders [3]. They cannot even issue debentures to themselves as security for money advanced [4], or allot shares to themselves [5].

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1. T. R. Pratt (Bombay) Ltd. v. M. T. Ltd. [1938] P. C. 159, [1938] Bom. 421, 42 C. W. N. 733, P. C.
2. Transvaal Lands Co. v. New Belgian L. & D. Co. (supra) ; Parker v. Mckenna [1874] 10 Ch. App. 96.
3. North-West Transportation Co. v. Beatty (supra) ; Burland v. Earle [1902] A. C. 83 at p. 94 ; but see Cook v. Deeks [1916] 1 A. C. 554.
4. Cox v. Dublin City Distillery No. 2 [1915] 1 I. R. 345.
5. Neal v. Quinn [1916] W. N. 223.

Voting at directors' meeting.

Where the directors vote in favour of a resolution allotting shares to themselves and other persons, such a resolution is bad so far as it relates to any allotment to the directors voting in respect thereof and an interlocutory injunction will be granted restraining such directors from exercising voting powers in respect of the shares so allotted to them, but the resolution as a whole is not bad and the allotments to persons other than directors are valid 1. Voting by an interested director for a transaction in which he is interested, will not *per se* render the contract either void or voidable. But non-disclosure or voting, when but for the vote the contract would not have been sanctioned, will in all cases render the interested director liable to account for "secret profits" 2.

No director is entitled to join in forming a quorum for the consideration of matters in respect of which he is not entitled to vote 3.

If two directors are interested in a transaction, the objection will not be removed by splitting up the resolution and each director voting only on the part affecting the other 4. A resolution reducing the quorum for the purpose of enabling those not interested to pass the resolution is invalid 4.

A resolution authorizing the issue of debentures in which the directors are personally interested is a nullity; but the company may be estopped by circumstances from alleging the invalidity of the debentures 5.

Articles under Act VI of 1882.

Although this section and the previous one impose a penalty, articles adopted under the Act of 1882, though unamended after the passing of the present Act, are not rendered *ultra vires* nor the contract void thereby 6.

Effect of non-disclosure of interest.

Non-disclosure of the interest of a director or voting by him will not *per se* render the contract voidable, but will render the interested director liable to account for secret profits 7.

Where the interest of a director in the contract is such that it is likely to produce a conflict between his duty to the company and his duty or interest in the other party to the contract, he is bound to disclose it; but if the whole body of the directors was already aware of such interest, formal disclosure is not necessary 8.

Pleading.

In a charge of non-disclosure by a director of his interest in a particular contract or transaction the pleading must not only include allegations of existence of such interest, but also the fact or allegation of non-disclosure, or in other words, the breach of the obligation 9.

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1. Neal v. Quinn [1916] W. N. 223.
2. Venkata Chalapathi v. Guntur Cotton &c. Mills [1929] M. 353, 115 I. C. 486. See [1932] P. C. 244 where an appeal from this dicision was dismissed by the Privy Council.
3. In re Sir Hormusji A. Wadia [1921] 23 Bom. L. R. 1104; North Eastern Insurance Co. [1919] 1 Ch. 198.
4. North Eastern Insurance Co. [1915] W. N. 210, 31 T. L. R. 428.
5. Victors Ltd. v. Lingard [1927] 1 Ch. 323.
6. Pydah v. Guntur Cotton &c. Mills [1929] M. 353, [1928] M. W. N. 481.
7. Pydah v. Guntur Cotton &c. Mills [1929] M. 353, [1928] M. W. N. 481.
8. Ibid, and see also Imperial M. C. Assn. v. Coleman [1871] 6 Ch. App. 558; Costa Rica Ry. Co. v. Forwood (supra).
9. Venkata Chalapathi v. Guntur Cotton &c. Mills, (supra), per Srinivasa Ayyangar J.

Internal management. The principle of the English law as to internal management applies to a case of disability of directors arising under this section. The reason for the rule is that it would be disastrous in a business community if contracts made with companies would be impeached on account of matters known to the company, but not known to the other contracting party 1. So this section will not deprive of the benefit of his contract with the company a third party who has no notice of the defect in the director's authority. Such a person will be entitled to assume that the internal management of the company is properly conducted. But if the third party is shown to have knowledge of the real state of affairs, the transaction is voidable as against him 2.

Disclosure to members in case of contract appointing a manager.

91C. (1) Where a company enters into a contract for the appointment of a manager *or managing agent* of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall, *within twenty-one days from the date of entering into the contract or the varying of the contract,* send an abstract of the terms of such contract or variation, as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member; and the contract shall be open to the inspection of any member at the registered office of the company.

(2) If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine not exceeding one thousand rupees; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

This section was inserted by the amending Act XI of 1914.

In sub-s. (1) the words in italics have been inserted by the Companies (Amendment) Act, 1936. For effect of the amendment see Introduction.

What is a contract within this section. The appointment by the directors of one of their body as chairman or as managing director without remuneration is not a contract within the meaning of this section, being merely a delegation of power; but where a resolution is passed at a board meeting that one of the directors be appointed managing director at a remuneration and that director is present and accepts the appointment, there is a contract between the company and the director, and the latter should not vote in support of the resolution 3. Allotment of shares has also been held to be such a contract 4.

Interest. The interest requiring disclosure is not only pecuniary interest, but every relation that can reasonably be regarded as capable of affecting the directors' decision 5.

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1. T. R. Pratt (Bombay) Ltd. v. E. D. Sasson & Co. [1936] B. 62, 37 Bom. L. R. 978, 161 I. C. 126.
2. T. R. Pratt (Bombay) Ltd. v. M. T. Ltd. (supra).
3. Foster v. Foster [1916] 1 Ch. 532.
4. Quinn v. Robb [1916] 141 L. T. Jo. 6.
5. Venkata Chalapathi v. Guntur Cotton &c. Mills [1929] M. 353, 115 I. C. 486.

A breach of this section does not *ipso facto* render the transaction void or voidable [1].

91D. (1) Every manager or other agent of a company other than a private company *not being the subsidiary company of a public company* who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it has been made.

Contracts by agents of company in which company is undisclosed principal.

(2) Every such manager or other agent shall forthwith deliver the memorandum aforesaid to the company *and send copies to the directors*, and such memorandum shall be filed in the office of the company and laid before the directors at the next directors' meeting.

(3) If any such manager or other agent makes default in complying with the requirements of this section—

(*a*) the contract shall, at the option of the company, be void as against the company; and

(*b*) such manager or other agent shall be liable to a fine not exceeding two hundred rupees.

This section was inserted by the amending Act XI of 1914.

In this section the words in italics have been inserted by the Companies (Amendment) Act, 1936.

As to the definition of "manager" see s. 2 (1) (9). As to the meaning of the word manager see notes to s. 87. As regards a manager's power to make contracts on behalf of the company see notes to s. 88.

Prospectus.

92. (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

Filing of prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

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[1] Venkata Chalapathi v. Guntur Cotton &c. Mills [1929] M. 353, 115 I. C. 486.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so filed.

"Prospectus."

For the definition of "prospectus" in every part of this section the Court must go back to s. 2 (14). To hold that a prospectus is a prospectus only if it conforms to the terms of s. 93 would mean that in regard to s. 92 the penalty for failure to file the prospectus could be avoided by allowing it to lack any of the requisites laid down by s. 93 1.

Meaning of "issuing to the public."

A circular placed in the hands of friends of the proposed directors, even to the number of forty and intended to be shown to their friends, has been held to be not an invitation to the public 2. It has also been held that printing of 200 copies of a prospectus and circulation thereof by the directors and promoters among their friends is not such an invitation 3. It has however been held that an offer to a limited class may be an offer to the public 4. A proof prospectus circulated before incorporation may not amount to an issue of the prospectus 5.

In this connection the observations of their Lordships in *Nash* v. *Lynde* 6 are interesting: "In my judgment it is sufficient in order to bring s. 81 (of English Act of 1908 corresponding to s. 93 of the Indian Act) into operation that the prospectus in question should be proved to have been shown to any person as a member of the public and as an invitation to that person to take some of the shares referred to in the prospectus on the terms therein set out" 7.

Lord Sumner however observed: "Though literally it is true that the issue is not expressly said in the section to be an issue to the public, I think that it must be so in substance, otherwise any private letter, written by a person engaged in forming a company and advising his correspondent to take shares, would become an issued prospectus if other letters were issued by him asking others to do the same" 8. Then again: "The point is that the offer is such as to be open to any one who brings his money and applies in due form, whether the prospectus was addressed to him on behalf of the company or not" 8. "In the present case", observed Lord Sumner, "all that constituted the 'issue' was that one of the directors, in the course of a general endeavour to find money, was furnished with some copies of these type-written documents, and gave one of them to a friend who, as requested, passed it on to a friend of his own. I cannot believe that any one in business would call this the issue of a prospectus" 9.

Lord Buckmaster made the following observations on the point: "The first thing necessary to notice is that s. 81 (of the English Act of 1908 corresponding to s. 93 of the

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1. Shunmugam v. Ranga Rama [1934] M. 641, 67 M.L.J. 437, 152 I.C. 703.
2. Sleigh v. Glasgow & Transvaal Options [1904] Ct. of Sess. 6 Fraser 420.
3. Sherwell v. Combined I. M. Syndicate [1907] W. N. 110, 23 T.L.R. 482.
4. South of England Natural Gas Co. [1911] 1 Ch. 573.
5. Batey v. Keswick [1901] W. N. 167, 85 L. T. 18.
6. [1929] A. C. 158.
7. Per Lord Hailsham L. C. in Nash v. Lynde [1929] A. C. 158 at pp. 164-65.
8. Ibid, per Lord Sumner at p. 169.
9. Ibid, per Lord Sumner at p. 168.

Indian Act) contains no reference of any issue to the public. It is sufficient that the prospectus should be issued. The question of what does or does not amount to an issue is a question of fact in each case and is not capable of a rigid and exact definition ; but in my opinion it certainly does not necessarily involve a general application impartially made to all members of the public. A distribution of a prospectus among a well defined class of the public would be an issue within the meaning of s. 81" 1.

Then again : "A prospectus, the distribution of which was so limited, would none the less be issued and this is the meaning of the statute is, I think, made plain by considering that sub-s. 7 of s. 81 (sub-s. 3 of s. 93 of the Indian Act) excludes from the application of the section a circular inviting existing members of a company to subscribe for shares. This would be unnecessary if an issue to such limited class were not *prima facie* included. The definition gives rise to greater difficulty. A document is not prospectus unless it is an invitation to the public, but if it satisfied this condition it is not the less a prospectus because it is issued to a defined class of the public" 2.

In the case of a reconstruction, shares issued to the members of the old company are not in the same position as shares issued to the public. The circular offering them would appear not to be a prospectus within the meaning of this section 3.

Prospectus when false.

In a prospectus no misstatement or concealment of any material fact or circumstance is allowed 4. A prospectus may be false in "material particulars" within the meaning of s. 8 of the English Larceny Act, 1861, if by a number of statements a false impression with regard to the financial position of a company is intentionally conveyed, although each statement taken by itself is true 5.

Where a prospectus described a contract for the construction of a railway line and entered into it at "a price considerably within the available capital of the company" and the facts were that from the nominal capital of £50,000 was to be deducted £50,000 as the price of purchasing the concern to make the railway and the contract price for making it was £420,000, the representation was held to be untrue and deceptive 6. The phrase "available capital of the company" was not a true but a deceptive description of capital which might be raised under the borrowing powers conferred on the directors 6.

Remedies of allottees.

In respect of the liability incurred by a person for issuing a prospectus, the remedies open to an allotee of shares are : (1) rescission of the contract to take shares ; (2) defence of misrepresentation or fraud to an action for call ; (3) rectification of the register of members and consequential relief ; (4) damages in an action of deceit ; (5) damages under the statutory provisions, and (6) criminal proceedings.

Effect of fraud and misrepresentation.

A person who has been misled by misrepresentation and whose shares have been forfeited for non-payment of calls, ceases to be a shareholder. As a debtor to the company he stands on a different footing and may repudiate the contract and defend an action for calls on the ground of fraud 7.

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1. Nash v. Lynde [1929] A. C. 158 at p. 170.
2. Ibid at p. 171.
3. See Booth v. New Afrikander G. M. Co. [1903] 1 Ch. 295.
4. Eaglesfield v. Londonderry [1876] 4 Ch. D. 693 C. A., on appeal [1878] 38 L. T. 303.
5. Rex v. Lord Kylsant [1932] 1 K. B. 442 [Lord Halsbury's observations in Aaron's Reefs v. Twiss (1896) A. C. 273 at p. 281 were relied on].
6. Central Ry. Co. of Venezuela v. Kisch [1867] L.R. 2 H.L. 99.
7. Aaron's Reefs v. Twiss [1896] A. C. 273.

Rescission of contract to take shares.

The contract to take shares may be rescinded on the ground of misrepresentation made by the company's directors or agents acting within the scope of their authority[1], but not by unauthorized persons making promises purporting to be made on its behalf[2]. For examples of misrepresentation and non-disclosure entitling a shareholder to rescission see the cases noted below[3].

Defence to action of rescission.

Where there is a material misrepresentation, it is no defence to an action for rescession of the contract that the person to whom the representation was made had the means of discovering, and might with reasonable diligence have discovered, that it was untrue[4]. It is no defence to such an action that the person made a cursory and incomplete inquiry into the facts, for if a material misrepresentation is made to him, he must be taken to have entered into the contract on the faith of it, and inorder to take away his right to have the contract rescinded, it must be shown either that he had knowledge of facts which showed it to be untrue, or that he stated in terms or showed clearly by his conduct that he did not rely on the representation[4].

Forfeiture after rescission.

After proceedings for rescission have commenced, forfeiture of the shares for non-payment of calls will be restrained until trial, on the plaintiff giving an undertaking as to damages and paying the amount of calls with interest into the Court[5].

Claim for rescission and damages.

A person may combine in the same action his claim for rescission and damages for deceit or compensation under the Act[6] against the directors and other persons[7]. Where a prospectus contains a false representation as to a matter of fact made inorder to induce a person to act thereon, and acting on such representation he sustains damage, it may be recovered from the directors or promoters who authorized the issue of the prospectus[8]. The false statement must be as to matter of fact and not of law[9]. But a statement as to something expected to happen in the future is generally a matter of opinion[9]. The plaintiff must prove that the defendant was responsible for the prospectus[10]. If the false statement is made in the honest belief that it is true, it is not fraudulent and does not give ground for an action of deceit[11]; but see s. 100 and notes.

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[1] Adam v. New Bigging [1888] 13 App. Cas. 308.

[2] U. K. Shipowners' Co. [1865] 11 L. T. 613 C.A.; Newlands v. National E. A. Assn. [1885] 54 L.J. (Q B.) 428 C. A.

[3] Central Ry. Co. of Venezuela v. Kisch [1867] L.R. 2 H.L. 99; Ross v. Estates Investment Co. [1868] 3 Ch. App. 682; Kent v. Freehold Land Co. [1868] 3 Ch. App. 493; Henderson v. Lacon [1867] L. R. 5 Eq. 249; Arnison v. Smith [1889] 41 Ch. D. 372; Reese River &c. Co. v. Smith [1869] L. R. 4 H. L. 64; London & Staffordshire &c. Co. London & Leeds Bank [1887] 56 L. T. 115; Wainwright's case [1883] 24 Ch. D. 149; Blake's case [1865] 34 Beav. 639; Mount Morgan [1890] 63 L. T. 429; Glaseir v. Rolls [1889] 42 Ch. D. 436; (West) Gold Mine [1887] 56 L. T. 622; Scott v. Snyder &c. Co. [1892] 67 L. T. 104; Lodwick v. Perth [1884] 1 T.L.R. 76.

[4] Redgrave v. Hurd [1881] 20 Ch. D. 1, C.A.; Central Ry. Co. of Venezuela v. Kisch [1867] L. R. 2 H. L. 99.

[5] Lamb v. Sambas &c. Co. [1908] 1 Ch. 845.

[6] S. 100, sub-s. (1) (b).

[7] Frankenburg v. Great Horseless Carriage Co. [1900] 1 Q. B. 504 C. A.

[8] Arnison v. Smith [1889] 41 Ch. D. 348 C. A.

[9] Beattie v. Ebury [1872] 7 Ch. App. 777, on appeal [1874] L. R. 7 H. L. 102.

[10] Watts v. Atkinson [1892] 8 T. L. R. 235 C. A.

[11] Derry v. Peek [1889] 14 App. Cas. 337.

Damages.

A shareholder cannot retain his shares and bring an action for damages against the company 1. He must show that he has repudiated the shares and has not acted as a shareholder after discovering the misrepresentation 2. The right of rescission is lost by delay in repudiating the shares within a reasonable time, as well as by the commencement of winding up 3.

Measure of damages.

The plaintiff must prove actual damage to himself 4 and the measure of damages is the difference between what the shareholder paid for the shares and what they were worth when the shares were allotted to him 5.

The right of action for deceit survives to the personal representatives of the aggrieved person 6. The compensation should be estimated with reference to the loss sustained and does not resemble a penalty 7.

Director's liability.

A director is not liable in respect of false representations in a prospectus issued by his co-directors or any other agent of the company unless he has expressly authorized or tacitly permitted its issue, nor is a promoter liable if the misrepresentation is not made with his consent or by his agent 8.

Sub-s. (5). Where a prospectus fulfilling all requirements of law was filed with the registrar, but subsequently a prospectus was issued in Bengali which did not contain certain particulars required by s. 93 and was not a verbatim translation of the English prospectus filed with the registrar, it was held that the person issuing the Bengali prospectus was liable to be convicted under this sub-section 9.

Specific requirements as to particulars of prospectus.

93. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state—

(*a*) the contents of the memorandum, with the names, descriptions and addresses of the signatories and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company *and the number of redeemable preference shares intended to be issued with the date or, where no date is fixed, the period of notice required and the proposed method of redemption*; and

(*b*) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision

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1. Houldsworth v. City of Glasgow Bank [1880] 5 App. Cas. 317.
2. Bwlch-y-Plwm Lead Mining Co. v. Baynes [1867] 2 Exch. 324.
3. Overend, Gurney & Co. [1867] 2 H. L. 325 *sub nom.* Oakes v. Turquand.
4. Hyde v. Bulmer [1868] 18 L. T. 293.
5. Arkwright v. Newbold [1881] 17 Ch. D. 301 C. A; Stevens v. Hoare [1904] 20 T. L. R. 407.
6. Twycross v. Grant [1878] 4 C. P. D. 40 C. A.
7. Thomson v. Clanmorris [1900] 1 Ch. 718 C. A.
8. Keighley, Maxted & Co. v. Durant [1901] A. C. 240.
9. Emperor v. Bengal Salt Co. [1936] C. 33, 40 C. W. N. 320, 37 Cr. L. J. 379.

in the articles as to the remuneration of the directors ; and

(c) the names, descriptions and addresses of the directors or proposed directors and of the managers or proposed managers *and managing agents or proposed managing agents* (if any) *and any provision in the articles or in any contract as to the appointment of managers or managing agents and the remuneration payable to them* ; and

(d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share ; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount (if any) paid on the shares so allotted ; and

(e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued ; and

(ee) *where any issue of shares or debentures is underwritten, the names of the underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge the underwriting obligations* ; *and*

(f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures to the vendor, and where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor : Provided that where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors ; and (*ff*) *where any property referred to in clause (f) has within the two years preceding the issue of the prospectus been transferred by sale, the amount paid by the purchaser at each such transfer so far as the information is available and, where any such property is a business, the profits accruing from such business during each of the three years immediatly preceding the issue of the prospectus or during each year of the existence of the business if less than three years so far as the information is available. A balance sheet of the business concerned made up to a date not more than ninety days before the date of the issue of the prospectus shall be appended to the prospectus ; and*

(*g*) the amount (if any) paid or payable as purchase-money in cash, shares or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill ; and

(*h*) the amount (if any) paid within the two preceding years or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in, or debentures of, the company, *or as discount in respect of shares issued showing separately the amount, if any, so paid to the managing agents* : Provided that it shall not be necessary to state the commission payable to sub-underwriters ; and

(*i*) the amount or estimated amount of preliminary expenses ; and

(*k*) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment ; and

(*l*) the dates of, and parties to, every material contract *including contracts relating to the acquisition of property to which clause (f) applies*, and a reasonable time and place at which any material contract or a copy thereof may be inspected : Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract (*except a contract appointing or fixing the remuneration of a managing director or managing agent*) entered into more than two years before the date of issue of the prospectus ; and (*m*) the names and addresses of the auditors (if any) of the company ; and

(*n*) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company ; and

(*o*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by, *and the rights in respect of capital and dividends attached to*, the several classes of shares respectively ; *and*

(*p*) *where the articles of the company impose any restrictions upon the members of the company in respect of the right to attend, speak or vote at meetings of the company or of the right to transfer shares, or upon the directors of the company in respect of their powers of management, the nature and extent of those restrictions* ;

[*and*

(*q*) *where any part of the sums required for the matters set out in sub-section* (2) *of section* 101 *is to be provided out of sources other than share capital, particulars of the amount to be provided and the sources thereof.*]

(1A) *Where the prospectus is issued by a company which has been carrying on business prior to the issue thereof, the prospectus shall set out the following reports in addition to the matters referred to in sub-section* (1), *namely :—*

(*i*) *a report by the auditors of the company with respect to the profits of the company including its subsidiary companies, if any, so far as the information is available in each of the three financial years immediately preceding the issue of the prospectus and with respect to the rates of the dividends, if any, paid by the company on each class of shares in the company for each of the said three years giving particulars of each such class of shares on which such dividends have been paid and the source* *from which the dividends have been paid and particulars of the cases in which no dividends have been paid on any class of shares for any of those years, and if no accounts have been made up for any part of a period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact ;*

(*ii*) *if the proceeds or any part of the proceeds of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by an accountant or accountants holding the certificate referred to in section 144 who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus :*

Provided that if, in the case of a company which has been carrying on business for less than three years, the accounts of the company have been made up only in respect of two years or any shorter period, this sub-section shall have effect as if references to two years or such shorter period were substituted for references to three years.

(1B) *The statement referred to in clause (ff) of sub-section* (1) *and the report referred to in sub-section* (1A) *with respect to the profits of a company or business shall show clearly the trading results and all charges and expenses incidental thereto excluding income or profits having no relation to the trading for the period covered and excluding also items of profit or income of a non-recurring nature but including amounts appropriated from profits to such purposes as payment of taxation or reserves.*

* * * *

(2) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum, or the signatories thereto, and the number of shares subscribed for by them.

(3) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons.

(4) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and of managers or proposed managers, and the

amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business :

Provided that the said requirements, except the requirement as to the amount or estimated amount of preliminary expenses, shall apply to a prospectus filed in pursuance of section 154.

(5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Amendment. By the Companies (Amendment) Act, 1936, the words in italics have been inserted in clauses (a) and (c) of sub-s. (1), the new clauses (ee) and (ff) have been introduced, for the words "or the rate of any such commission" in cl. (h) after the words "company" the words in italics have been substituted, in cl. (l) the words in italics have been inserted, in cl. (o) the words in italics have been inserted, and the new cl. (p) has been added. By the same Act the new sub-sections (1A) and (1B) have been inserted and sub-s. (1C) was added and to sub-s. (4) the proviso has been added. Some of these amendments were suggested by s. 35 and the Fourth Schedule of the English Act of 1929 which may be compared. As to the effects of these important amendments see Introduction. After cl. (p) in sub-s. (1) the word "and" and the new cl. (q) have been added by the Repealing and Amending Act XX of 1937 and by the same Act the new sub-s. (1C) has been omitted. The change is merely verbal as sub-s. (1C) was in the same terms as the new cl. (q) of sub-s. 1.

Prospectus not to be misleading. It is very important to remember that a prospectus should never be misleading. It should reveal the facts in their true colour, as men put their money in the company on the faith of its prospectus. Where a prospectus was issued which purported to invite persons to become shareholders in an old established business, but money was really being asked to feed and supply an ambitious gamble, it was held that the prospectus was false in material particulars. "To advertise that business," observed Lord Hewart C. J., "as a normal business seeking development when money is really being asked to feed and supply an ambitious gamble, is merely deceit. The argument is not that in this or that particular this prospectus is true; the argument is that its whole purpose and effect were to deceive" 1. For the penalty for issuing a false prospectus see. s. 282 *post*.

Meaning of "address." Sub-sec. 1, *cl. (a)*. Address generally means residence ; it is not sufficient to state the place of business 2.

Founders' shares are generally few in number and of small nominal value. They are generally created for and appropriated to the remuneration of the founders or promoters of the company, they undertaking to pay the preliminary expenses and guarantee the placing of the shares which are offered for public subscription 3. Founders' shares are usually given a right to a share, say one-third of the surplus profits of the company, after paying a fixed dividend (say, seven per cent. per annum) on the other shares; and the reason why the founders' shares attain such high prices in some cases, is that such share of surplus profits, though not very large in itself, may,

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1. R. v. Bishirgian [1936] 154 L.T. 499 C.A. at p. 502.
2. Story v. Rees [1890] 24 Q. B. D. 748.
3. Palmer's Company Precedents, 15th ed. (1938), p. 533.

"Founders' or management shares."

when spread over a few founders' shares, amount to a very large percentage [1]. The founders' or management shares are ordinarily deferred shares receiving no dividend until the preference and ordinary shares have been paid a fair dividend, the amount varying according to agreement. These shares are generally used to remunerate the promoters or founders of the company or the underwriters of the share capital. They are few in number and when surplus profits are large, these shares become very valuable [2]. In the case, noted below [3], there was only one management share in respect of which no dividend was payable, but it gave the holder thereof a majority of one over all other votes which could on any poll be cast by all other shareholders present in person or by proxy, so that the holder of the share had complete control of the voting power. The management share also conferred a right on a return of capital in a winding up to one-half of any surplus assets remaining after making provision for the claims of the preference shareholders. At a later date the management share was renamed reversionary share and its voting rights altered so that upon a poll on any special or extraordinary resolution (except a resolution for removing an elected director) the holder should have such a number of votes as should (together with any other votes exercisable by him) exceed by one-third the total votes which could be cast by all the other shareholders present in person or by proxy.

It is not lawful to exchange the founders' [4] or deferred shares for a larger amount of ordinary shares, as this may be in the nature of issuing the ordinary shares at a discount [5]. Where additional shares are issued at a premium [6], the founders often claim the premium to be profit and demand their proportionate share, for it appears that the premium may be regarded as profit and may be applied in paying dividend [7].

Remuneration of directors.

Cl. (b). If the remuneration of directors is provided for in the articles it cannot be changed without a special resolution [8]. If the articles provide for the remuneration, it may be paid out of capital, in case there is no profit [9]. Directors however may waive their remuneration, and if they do so, they cannot claim it again [10]. Directors cannot get their travelling expenses, unless this is expressly provided for in the articles [11]. For fuller notes see s. 83A and reg. 69 of Table A.

Cl. (c). The words "and of the managers or proposed managers (if any)" were not in the English Act.

What is sufficient statement.

Cl. (d). When the amount of the minimum subscription stated in the prospectus and the memorandum or the articles of association has been subscribed within one hundred and eighty days after the first issue of the prospectus, and the sum payable on application has been paid to and received in cash, the company may proceed to allotment [12]. Ten per cent. of the shares offered was held to be a sufficient statement of the amount [13]. The statement of the minimum subscription must be an express statement and not one which can be implied from other statements in the prospectus 1. Now see the new sub-ss (1), (2) and (2A) of s. 101.

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[1] *Ibid*, p. 534. [2] Gore-Browne, 36th ed. p. 32 ; Hals. p. 90.

[3] Investment Trust Corpn. v. Singapore Traction Co. [1935] Ch. 615, C.A.

[4] Story v. Rees (supra).

[5] Development Co. of C. & W. Africa [1902] 1 Ch. 547 ; Anglo-French Exploration Co. [1902] 2 Ch. 845.

[6] Greater Britain Re-Insurance Co. [1921] 124 L. T. 194.

[7] Hoare & Co. [1904] 2 Ch. 208.

[8] Boschoeck Proprietary Co. v. Fuke [1906] 1 Ch. 148.

[9] Lundy Granite Co. [1872] 26 L. T. 673.

[10] West Yorkshire Darracq Agency v. Coleridge [1911] 2 K. B. 326.

[11] Young v. Naval, Military &c. Ltd. [1905] 1 K. B. 687.

[12] S. 101.

[13] West Yorkshire Darracq Agency [1908] W.N. 236, 25 T.L.R. 77. But now see sub-s. (2) of s. 101 *post.*

"Subsequent offer."

Where although the first prospectus was headed "for private circulation only", but contained a statement that it had been filed with the registrar, it was held that the circulation of the first prospectus was an offer to the public, and consequently the second prospectus was a "subsequent offer" and that the first offer ought to have been stated 2. The remedy of the allottee in such a case is in damages against the person responsible for the prospectus, and not by rescission 3. The term "friends" used in a prospectus includes business friends 4.

Instalment.

If the prospectus names the days upon which instalments of the shares are payable, the company cannot call up the amount more rapidly. But a general statement that "it is anticipated that no further call will be made" does not prevent the company calling up the whole unpaid amount, and an arrangement between the company and its members as to the times at which calls shall be made is not binding on the liquidator in winding up 5.

"Fully paid up shares."

Cl. (e). A contract to issue shares as fully paid up will not protect the allottee from having to pay up the whole amount of the shares unless there was good consideration for the contract, *e. g.*, either existing debt which was extinguished, or a promise to make over property or to do future work 6.

Requirement of the clause.

Cl. (f). Where the company purchases the benefit of an existing contract, it will be necessary to state both the price paid for such benefit and the price payable under the contract 7. But this clause does not require that the prospectus should, in the case of a completed purchase, disclose the amount of the purchase money paid by the vendor upon his acquisition of the property. As to the disclosure of the name of the vendor's vendor, the test seems to be whether any of the cash paid by the company is paid to the original vendor or not 7.

Cl. (g). For the meaning of the word "cash" see notes to s. 105.

Cl. (h). As to the commission that may be paid to the underwriter see notes to s. 105.

If the terms of the prospectus are afterwards altered, the underwriting agreement may become void 8. See notes to s. 105.

What are preliminary expenses.

Cl. (i). Powers are generally taken in the memorandum of association to pay the preliminary expenses comprising preparation, printing, circulating and advertising the prospectus, and the preparation and printing of the memorandum and articles of association as well as the fees, stamps and registration expenses. But even without the powers a company may pay the preliminary expenses including commission for placing the shares 9. A promoter however cannot re-

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1. Rousell v. Burnham [1909] 1 Ch. 127.
2. South of England Natural Gas Co. [1911] 1 Ch. 573 ; Wimbledon Olympia Ltd. [1910] 1 Ch. 630.
3. Ibid (South of England &c.).
4. Bansidhar v. Tata Power Co. [1925] B. 272, 27 Bom. L. R. 330, 87 I. C. 547.
5. Cordova Union Gold Co. [1891] 2 Ch. 580.
6. Eddystone Marine Insurance Co. [1893] 3 Ch. 9.
7. Brooks v. Hansen [1906] 2 Ch. 129.
8. Warner International Co. v. Kilburn, Brown & Co. [1914] W.N. 61, 110 L.T. 456.
9. Metropolitan C. C. Assn. v. Scrimgeour [1895] 2 Q.B. 604 ; Licensed Victuallers' M. T. Assn. [1889] 42 Ch. D. I.

cover them if the company refuse to pay, even where there is a provision in the memorandum or the articles in this behalf [1]; for provisions thereof cannot be taken advantage of by the outsiders or even by the members in any other capacity than that of the members [2]. A statement in the articles of association that the company shall pay the preliminary expenses of forming the company does not give the promoters or the solicitor a right to be paid the expenses incurred by them [3].

Notice of contents of contracts.

Cl. (l). A prospectus, which merely specifies the dates of and names of parties to contracts, does not give notice of circumstances contained in the contracts which are material to be known and the omission causes the prospectus to give a false impression [4].

"Material contract."

A material contract under this clause appears to be one "which, upon a reasonable construction of its purport and effect, would assist a person in determining whether he would become a shareholder in the company [5], or one which is calculated to influence persons in making up their minds whether or not they will apply for shares [6]. In this connection see also *Gluckstein* v. *Barnes* [7].

A contract may be material although it has been wholly carried out. A mistaken view in this respect is no answer to an action based on non-disclosure, however honest the directors might have been [8].

Construction—estoppel.

Where a clause in a prospectus refers to an agreement and purports to set out its effect with the knowledge and acquiescence of the other contracting party or his duly authorized agent, the latter is thereby estopped from setting up any other construction of the agreement [9].

Effect of non-disclosure.

If the contract is not disclosed, any person who has taken shares on the faith of the prospectus can claim damages suffered by him [10]; but he must prove that if he had known the undisclosed contract, he would not have become a shareholder [11]. Where there is no fraud in fact and the non-disclosure is owing to an honest mistake, a subscriber of shares, who has agreed to waive any fuller compliance with the section than is contained in the prospectus, cannot maintain an action for damages [11].

Cl. (n). See s. 97 and notes.

Sub-s. (3). At the end of this sub-section the following words occur in the English Act of 1929, but not in this Act; *viz.*, "but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently." See s. 35 (5) of that Act printed in the Appendices.

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1. Rotherham Alum Chemical Co. [1883] 25 Ch. D. 103.
2. Browne v. La Trinidad [1887] 37 Ch. D. I.
3. English & Colonial Produce Co. [1906] 2 Ch. 435.
4. Aaron's Reefs v. Twiss [1896] A. C. 273.
5. Sullivan v. Mitcalfe [1880] 5 C. P. D. 435 at p. 465.
6. Twycross v. Grant [1877] 2 C.P.D. 469 at p. 485; Broome v. Speak [1903] 1 Ch. 586, 619 & 627 affirmed *sub nom.* Shepheard v. Broome [1904] A. C. 342.
7. [1900] A. C. 240.
8. Shepheard v. Broome (supra).
9. De Tchihatchee v. Salerni Coupling Ltd. [1932] 1 Ch. 330.
10. Wimbledon Olympia [1910] 1 Ch. 630; Nash v. Calthorpe [1905] 2 Ch. 237; see also Macleay v. Tait [1906] A. C. 24; Marshall v. Morrison [1907] W. N. 29; Watts v. Bucknall [1903] 1 Ch. 766, 773.
11. Capel & Co. v. Sims' S. C. Co. [1888] 58 L. T. 807; Macleay v. Tait (supra).

Effect of failure to comply with the provisions.

Sub-s. (5). Under this sub-section a company is not absolved from the liability under s. 100[1]. The failure to comply with the provisions of this section may in some cases give a right to rescind the contract to take shares, or to damages against the directors; but to establish such a right it is necessary to prove more than mere omission of one or more of the particulars[2] and in such a case the remedy is not against the company in rescission or damages but against the persons responsible for the omission[3].

Liability for breach of a statutory duty.

The law of liability for breach of a statutory duty has thus been stated by Fletcher-Moulton L. J: "If by a statute a duty is laid on any person, every member of the public has a right to have the duty performed. The breach of it does not give every member of the public a right of action, because damage is an essential part of such cause of action; but it is settled law that where damage has accrued to any person through breach of statutory duty by another person the latter is liable."[4].

Loss as a natural result of default.

It will be necessary for the complaining party to show that his loss has arisen as a natural result of the defendant's default in complying with his statutory duty. He must satisfy the Court that if the proper statements had been contained in the prospectus, he would not have taken the shares[5]. But the party alleging misrepresentations will be pinned down to the misrepresentations alleged in his pleadings[6].

Misrepresentation in prospectus.

No misrepresentation or concealment of any material facts or circumstances will be permitted in a prospectus. The public are entitled to have the same opportunity of judging of everything material to a knowledge of the true character of the undertaking[7]. Where a person has been, by the fraudulent misrepresentations of directors or by their fraudulent concealment of facts, drawn into a contract to purchase shares in a company, the directors cannot enforce the contract against him, and he may rescind it[8]. A contract induced by fraud is not void but voidable, and therefore though the persons who by their fraud induced it may not enforce it, other persons may, in consequence of it, acquire interests and rights which they may enforce against the party who has been so induced to enter into it[8]. Under the exception in s. 19 of the Indian Contract Act the contract, even if caused by misrepresentation, would not be voidable, if the defendant had the means of discovering the truth with ordinary diligence. The application of that exception is not restricted to cases where the party is fixed with constructive notice of the true state of affairs[6].

If there is a material misrepresentation in the prospectus upon which a shareholder relied when applying for shares, he is entitled, provided he seeks relief within a reasonable time after learning the truth and before the company is in liquidation, to have his name removed from the register and the amount paid upon the shares returned with interest[9]. Only original subscribers and not purchasers of shares can obtain

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1. Shunmugam v. Ranga Rama [1934] M. 641, 67 M. L. J. 437, 152 I. C. 703.
2. Wimbledon Olympia Ltd. [1910] 1 Ch. 630.
3. South of England Natural Gas Co. (supra).
4. David v. Britannic Merthyr Coal Co. [1909] 2 K. B. 146 at p. 157.
5. Nash v. Calthorpe [1905] 2 Ch. 237; Macleay v. Tait [1906] A. C. 24.
6. Mohun Lal v. Sri Gungaji Cotton Mills Co. [1900] 4 C. W. N. 369.
7. Central Ry. Co. of Venezuela v. Kisch [1867] L.R. 2 H. L. 99.
8. Oakes v. Turquand [1867] L. R. 2 H. L. 325; Jagannath v. Official Liquidator [1938] All. 301, [1938] A. 193.
9. Scottish Petroleum Co. [1883] 23 Ch. D. 413; Metropolitian Coal Consumers' Association, Karberg's case [1892] 3 Ch. 1; Mohun Lal v. Sri Gungaji &c. Co., (supra); Central Ry. Co. of Venezuela v. Kisch [1867] L. R. 2 H. L. 99.

damages[1], unless the prospectus was issued with a view to induce persons to become purchasers[2]. As to what should be proved to obtain rescission of the contract to take shares and to establish the company's responsibility, see the cases noted below[3]. A variance between a prospectus and the memorandum of association will not, necessarily and as a matter of course, relieve a member from his liability as a contributory[4].

The aggrieved party cannot, as against the company, retain the shares and claim damages[5]. The relief can be claimed even after the shares have been forfeited[6]. Where the forfeiture is not complete, the Court will restrain the company from forfeiting the shares pending an action for rescission, usually requiring the plaintiff to pay into Court the amount of the call[7]. The aggrieved party need not show that the statement in the prospectus was made fraudulently or was known to the person making it to be untrue[8].

If the statement is true at the time it is made and becomes untrue before allotment of the shares, as for instance, if a director named in the prospectus has meanwhile resigned, it will be a good ground for rescission[9].

What may amount to misrepresentation.

Omission of material facts may amount to a misrepresentation[10]. But "in an honest prospectus many facts and circumstances may be lawfully omitted, although some subscribers may be of opinion that these would have been of materiality as influencing the exercise of their judgment"[11]. On "the other hand, if by a number of statements you intentionally give a false impression and induce a person to act upon it, it is not the less false, although if one takes each statement by itself there may be a difficulty in showing that any specific statement is untrue"[12]. The prospectus must be taken as a whole, for "everybody knows that half a truth is no better than a downright falsehood"[13].

Estoppel.

Where a party having a right to rescind his contract, after having knowledge of such right does any act affirming his contract, he cannot afterwards set up his right to avoid the contract[14]. Therefore any act by a shareholder recognizing his position as a member after knowledge of the misrepresentation such as selling or trying to sell his shares, attending meetings, signing proxies, paying calls or accepting dividends will prevent him from obtaining rescission, even though done under a mistake as to his rights[15] unless he has meanwhile definitely elected to rescind the contract as by commencing proceedings[16].

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[1] Peek. v. Gurney [1873] 6. H. L. 377.
[2] Andrews v. Mockford [1896] 1 Q. B. 372.
[3] Redgrave v. Hurd [1881] 20 Ch. D. I ; Kargberg's case (supra) ; Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate [1899] 2 Ch. 392 at p. 423 and Lynde v. Anglo Italian Hemp Spinning Co. [1896] 1 Ch. 178.
[4] Oakes v. Turquand [1867] L. R. 2 H. L. 325 ; Jagannath v. Official Liquidator [1938] All. 301, [1938] A. 193.
[5] Houldsworth v. City of Glasgow Bank [1880] 5 App. Cas. 317.
[6] Aaron's Reefs v. Twiss [1896] A. C. 273 at p. 287.
[7] Lamb v. Sambas Rubber &c. Co. [1908] 1 Ch. 845.
[8] Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate [1899] 2 Ch. 392.
[9] Scottish Petroleum Co. [1881] 17 Ch. D. 373 ; Scottish Petroleum Co. [1883] 23 Ch. D. 413 ; Kent County Gas Co. [1907] 95 L. T. 756.
[10] Cackett v. Keswick [1902] 2 Ch. 456.
[11] Per Lord Watson in Aaron's Reefs v. Twiss [1896] A. C. 273 at p. 287.
[12] Ibid, per Halsbury L. C. at p. 281.
[13] Per Lord Macnaghten is Gluckstein v. Barnes [1900] A. C. 240 at pp. 250-51.
[14] Clough v. London & N. W. Ry. [1871] L. R. 7 Ex. 26.
[15] Dunlop T. Cycle Co. [1896] 75 L. T. 385.
[16] Tomlin's case [1898] 1 Ch. 104.

Aggrieved party must seek relief within a reasonable time.

The complaining party should come within a reasonable time [1], as the rights and interests of other persons may intervene. "Where a person has contracted to take shares in a company and his name has been placed on the register, it has always been held that he must exercise his right of repudiation with extreme promptness after discovery of fraud or misrepresentation" [2]. He must also seek relief while the company is a going concern, for upon the commencement of liquidation, voluntary or otherwise, the creditors and other shareholders are interested in retaining his name on the register, and against them he has no claim to set aside the bargain [3].

Where no right of rescission.

Where there is omission to state some fact which ought under this section to be stated, and the omission does not falsify that which is stated, there is no right of rescission [4]. "Where parties are contracting with one another, each may, unless there is a duty to disclose, observe silence in regard to facts which he believes would be operative upon the mind of the other" [5]. "Simple reticence does not amount to legal fraud" [6]. An innocent misrepresentation in a prospectus may however be a ground for rescission [7]. In the following cases there is no right of rescission for misrepresentation and non-disclosure in the prospectus: Where the allottee subscribed for the shares before he saw the prospectus [8]; where the prospectus itself showed that the statements made therein were based on hearsay and were to be verified later on [9]; where the allottee did not rely on the statements, but made investigations himself [10]; where he is a man of such experience that he is not likely to be misled by the statements in the prospectus [11].

Simple notice of repudiation.

It is not enough to serve the company with a notice of repudiation. The aggrieved party must either procure the company to remove his name from the register, or commence proceedings to compel it to do so [12].

Remedy of persons taking shares from an allottee.

A person who takes shares not from the company, but from a person to whom they were allotted, has no remedy against the company [13]. But this rule does not apply where the prospectus is intended and used to induce purchasers in the market to buy the shares [14]. The statutory liability created by this section is cumulative and not in substitution of the law of deceit [15].

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1. Oakes v. Turquand [1867] 2 H. L. 325 ; Jagannath v. Official Liquidator (supra).
2. Per Lord Davey in Aaron's Reefs v. Twiss [1896] A. C. at p. 294 ; see also Scottish Petroleum Co. [1883] 23 Ch. D. 413 and Central Ry. Co. v. Kisch [1867] L. R. 2 H. L. 99.
3. Oakes v. Turquand [1867] L. R. 2 H. L. 325 : Tennent v. Glasgow Bank [1879] 4 App. Cas. 615 ; Scottish Petroleum Co. (supra).
4. Wembledon Olympia Ltd. [1910] 1 Ch. 630 ; South of England Natural Gas Co. [1911] 1 Ch. 573 ; see also Twycross v. Grant (supra) ; Broome v. Speak (supra) ; Shepheard v. Broome (supra) ; Watts v. Bucknall (supra).
5. Per Fry J. in Davies v. London Provincial M. I. Co. [1878] 8 Ch. D. 469 at p. 474 ; see also Turner v. Green [1895] 2 Ch. 209.
6. Walters v. Morgan [1861] 3 De G. F. & J. 718.
7. Reese River Silver Mining Co. [1867] 2 Ch. App. 604.
8. Smith v. Chadwick [1882] 20 Ch. D. 68.
9. British Burmah Lead Co. [1887] 56 L. T. 815.
10. Jennings v. Bronghton [1854] 23 L. J. Ch. 999.
11. Hallows v. Fernie [1868] 3 Ch. App. 467.
12. Thomson's case [1898] 5 Mans. 282.
13. Peek. v. Gurney [1873] L. R. 6 H. L. 377.
14. Andrews v. Mockford [1896] 1 Q. B. 372.
15. Aaron's Reefs v. Twiss [1896] A. C. 273.

For statement of principles as to (1) fiduciary relationship between promoters and shareholders, (2) validity of contracts between a company and its directors as promoters, (3) non-liability of directors for losses when acting *intra vires* and honestly, (4) voidability of a contract for misrepresentation, and (5) impossibility of rescinding a contract after change of position, see the case noted below 1.

As to a shareholder's right against the directors or other persons who have issued a false prospectus, see notes to s. 100.

94. **Meaning of "vendor" in section 93.** For the purposes of section 93 every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(*a*) the purchase-money is not fully paid at the date of issue of the prospectus; or

(*b*) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(c) the contract depends for its validity or fulfilment on the result of that issue.

As to the circumstances in which a company may be deemed to be a sub-purchaser see *Brookes* v. *Hansen* 2.

Where it is simply stated that the vendor is to take "£ 50,000 worth of fully paid up shares", this means fully paid up shares of the market value of £ 50,000 3.

95. **Application of section 93 to the case of property taken on lease.** Where any of the property to be acquired by the company is to be taken on lease, section 93 shall apply as if the expression "vendor" included the lessor, and the expression "purchase-money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

96. **Invalidity of certain conditions as to waiver or notice.** (1) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirements of section 93, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(2) *It shall not be lawful to issue any form of application for the shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of section 93:*

Provided that this sub-section shall not apply if it is shown that the form of application was issued either—

(*a*) *in connection with a* bona fide *invitation to a person to*

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1. Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate [1899] 2 Ch. 392.
2. [1906] 2 Ch. 129.
3. Mc Ilquham v. Taylor [1895] 1 Ch. 35 at p. 63.

enter into an underwriting agreement with respect to the shares or debentures ; or

(*b*) *in relation to shares or debentures which were not offered to the public.*

If any person acts in contravention of the provisions of this sub-section, he shall be liable to a fine not exceeding five hundred rupees.

Amendment. By the Companies (Amendment) Act, 1936, the original section 96 has been renumbered as sub-s. (1), and sub-s. (2) has been added. For the effect of sub-s. (2) see Introduction.

97. **Saving in certain cases of non-compliance with section 93.** (1) *If a prospectus is issued which does not comply with the provisions of section 93, every person who is knowingly responsible for the issue of such prospectus shall be liable to a fine not exceeding fifty rupees for every day from the day of the issue of the prospectus until a copy complying with the requirements of section 93 is filed.*

(2) In the event of non-compliance with *or contravention of* any of the requirements of section 93, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance *or contravention* if he proves that—

(*a*) as regards any matter not disclosed, he was not cognisant thereof ; or

(*b*) the non-compliance *or contravention* arose from an honest mistake of fact on his part ; *or*

(c) *the non-compliance or contravention was in respect of matters which in the opinion of the Court were immaterial, or was otherwise such as ought in the opinion of the Court having regard to all the circumstances of the case reasonably to be excused :*

Provided that, in the event of non-compliance with *or contravention of* the requirements contained in clause (*n*) of sub-section (1) of section 93, no such director or other person shall incur any liability in respect of the non-compliance *or contravention* unless it be proved that he had knowledge of the matters not disclosed.

Amendment. By the Companies (Amendment) Act, 1936, the original s. 97 has been renumbered as sub-s. (2) and the new sub-s. (1) has been inserted. The words in italics in sub-s (2) have been inserted by the same Act, and the new cl. (c) has been added thereby. For the effect of these amendments see Introduction.

Remedy of an aggrieved party. The mere fact of non-compliance with s. 93 does not entitle a person, who has taken shares on the faith of the prospectus, to have a rescission or rectification of the register. His remedy is in damages against those who are responsible for the prospectus 1.

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1. Wimbledon Olympia Ltd. [1910] 1 Ch. 630 ; South of England Natural Gas Co. [1911] 1 Ch. 573.

Obligations of companies where no prospectus is issued.

98. (1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars *set out in the form marked I in the Second Schedule.*

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act or, in so far as it relates to the allotment of shares to a company limited by guarantee and not having a share capital.

Amendment.

By the Companies (Amendment) Act, 1936, the words in italics at the end of sub-s. (1) have been substituted for the words "set out in the second Schedule."

Statement in lieu of prospectus.

The requirements of this section about proceeding to allotment are satisfied by the mere filing of the statement in lieu of prospectus, whether the particulars are or are not sufficiently supplied or whether it contains misstatements and omissions; and an allotment is not vitiated by the want of accuracy [1]. Allotment of shares and debentures before a company has filed the statement in lieu of prospectus is not wholly illegal and void [2]. The allotee may also be estopped by conduct from denying that he is a member [3].

Effect of false statement.

If a person applying for shares inspects the statement in lieu of prospectus, the statement becomes the basis of the contract, and if it contains a false statement, he may have a right to rescind [4]. A person who subscribes for shares on the faith of a statement in lieu of prospectus cannot claim compensation under s. 100.

Any person who wilfully makes a false statement in a statement in lieu of prospectus is guilty of a criminal offence [5].

The last few words "or, in so far as..............share capital" of sub-s. (2) are not in the English Act.

Document offering shares or debentures for sale to be deemed a prospectus.

***98A.** (1) *Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly as if the*

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[1] Blair Open Hearth Furnace Co. [1914] 1 Ch. 390.
[2] Re Jubilee Cotton Mills [1924] A. C. 958.
[3] James Burton & Sons [1927] 2 Ch. 132.
[4] Blair Open Hearth Furnace Co. (supra) at p. 401.
[5] S. 282.

shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act it shall, unless the contrary is proved, be evidence that an allotment of or an agreement to allot shares or debentures was made with a view to the shares or debentures being offered for sale to the public, if it is shown—

- *(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or*
- *(b) that at the date when the offer was made the whole of the consideration to be received by the company in respect of the shares or debentures had not been so received.*

(3) Section 97 shall apply to the person or persons making the offer as though they were persons named in a prospectus as directors of a company, and the provisions of section 93 shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated in a prospectus,—

- *(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates, and*
- *(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.*

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by all directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

This section is new. It has been inserted by the Companies (Amendment) Act, 1936, and reproduces s. 38 of the English Act of 1929. For the effect of the amendment see Introduction.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

99. A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the company in general meeting.

Liability for statements in prospectus.

100. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(*a*) with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement fairly represented the facts or was true;

(*b*) with respect to every misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation : Provided that the director, person named as director, promoter or person who authorised the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it ; and

(*c*) with respect to every misleading or untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document :

or unless it is proved—

(*i*) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(*ii*) that the prospectus was issued with his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent; or

(*iii*) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where a company existing at the commencement of this Act has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any suit or legal proceedings brought against him in respect thereof.

(4) Every person who, by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purpose of this section—

(*a*) the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or the portion thereof containing the misleading or untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company ;

(*b*) the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

This section reproduces the provisions of the Directors' Liability Act passed in England in 1890 for the purpose of strengthening the law as enunciated by the House of Lords in *Derry* v. *Peek* [1889] 14 App. Cas. 337 in respect of directors' liabilities. "Now the Directors' Liability Act was passed in 1890, the year after *Derry* v. *Peek* was decided in the House of Lords, and as it seems to me, for the express purpose of getting rid of the effect of that decision, so far and so far only as directors and promoters issuing a prospectus on the one hand and persons taking shares and debentures on the other hand are concerned" 1.

This section is confined to prospectus issued by or on behalf of the company and the directors are not liable to purchasers from third parties 2. But see the new s. 98A.

Scope.

Where the plaintiff succeeds on a cause of action under this section, he would be entitled to such "compensation" as he might prove in addition to any damages already recovered in respect of fraudulent misrepresentation 3.

This section as well as s. 93 have created new statutory liabilities in addition to the general law of deceit.

For the meaning of the word "prospectus" see notes to s. 2 (14) and s. 92.

Prospectus ought not to misrepresent facts.

A prospectus ought not to misrepresent actual and material facts or to conceal facts material to be known the misrepresentation or concealment of which may improperly influence and mislead the mind of the reader ; for if he is thereby deceived into becoming an allottee of shares and in consequence suffers loss, he is entitled to proceed against those who thus misled him 4. But mere non-disclosure of facts, unless such non-disclosure had the effect of making the disclosed facts absolutely false, would not be sufficient to sustain a proceeding which is really in the nature of an action for misrepresentation 5. Delay cannot be set up as an answer to such a suit 5.

A prospectus may be "false in material particulars" within the meaning of s. 84 of the (English) Larceny Act, 1861, if by a number of statements a false impression with regard to the financial position of a company is intentionally conveyed, although each statement taken by itself is true 6. See notes to s. 282 *post*.

Purpose when exhausted.

The proper purpose of a prospectus is to invite persons to become allottees of the shares. When the allotment is completed the office of the prospectus is exhausted and a person who has not become an allottee, but is only a subsequent purchaser of shares in the market, may not be so connected with the

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1. Mc Connel v. Wright [1903] 1 Ch. 546.
2. Urquhart v. Stracey [1928] N. I. 40 affirmed by C. A. [1928] N. I. 162, on appeal to the House of Lords see Clark v. Urquhart [1930] A. C. 28.
3. Ibid.
4. Peek v. Gurney [1874] L. R. 6 H. L. 377 per Lord Cairns.
5. Peek v. Gurney (supra).
6. King v. Kylsant [1932] 1 K. B. 442.

prospectus as to render those who issued it liable to indemnify him against losses suffered in consequence of the purchase[1]; for the vendee must show some direct connection between them and himself in the communication of the prospectus and its influence upon his conduct in becoming an allottee[1].

Meaning of "subscribe."

Subscription means application followed by allotment, and not subsequent purchase[2]. An "untrue statement" is a statement in fact untrue, and not a statement in the belief of the directors untrue[3]. It is immaterial that the statement was not fraudulent[4].

Compensation.

"Compensation" must be estimated and awarded with reference to the loss sustained, and does not resemble a penalty[5]. In the case of *clark* v. *Urquhart*, supra, Lord Sumner traced the history of the section from the decision of the House of Lords in *Derry* v. *Peek*[6] and held that the word "compensation" had no technical significance. The word was selected because it represented the difference between the actual value of the shares or debentures taken and the sums paid for them on the face of the prospectus and at the same time avoided the invidious association of "damages" with dishonesty in such connection[7]. On this point their Lordships reversed the judgment of the Court of Appeal in *Urquhart* v. *Stracey*[8]. As to the measure of damages and evidence thereof see *Stevens* v. *Hoare*[9].

Meaning of "promoter."

"The term 'Promoter,' says Lord Justice Bowen[10], "is not a term of law but of business usefully summarising up in a single word a number of business operations familiar to commercial world by which a company is generally brought into existence." It is a short and convenient way of designating those who set in motion the machinery by which the Act enables them to create an incorporated company[11]. It involves the idea of exertion for the purpose of getting up and starting a company or what is called "floating" it[12], and also the idea of some duty towards the company imposed by, or arising from, the position which the so-called promoter assumes towards it[13]. In *Twycross* v. *Grant*[14] Cockburn C.J. defined the word "promoter" as being one who undertakes to form a company with reference to a given project and to set it going and to take the necessary steps to accomplish that purpose. After referring to a number of authorities Sir Francis Palmer in his Company Precedents 15th ed. (1938) p. 110 observes : "It is obvious therefore that a person who originates the scheme for the formation of the company, has the memorandum and articles of association prepared, executed and registered, and finds the first directors, settles the terms (if any), and makes arrangement for advertising and circulating the prospectus and placing the capital, is emphatically a promoter in the fullest sense.

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[1] Peek v. Gurney [1874] L. R. 6 H. L. 377 per Lord Cairns.

[2] Peek v. Gurney (supra).

[3] Broome v. Speak [1903] 1 Ch. 586 C. A.

[4] Shepheard v. Broome [1904] A. C. 342.

[5] McEwan v. Campbell [1857] 2 Macq. 499.

[6] [1889] 14 App. Cas. 337.

[7] Clark v. Urquhart [1930] A.C. 28, 56-57.

[8] [1928] N.I. 162.

[9] [1904] 20 T.L.R. 407.

[10] Whaley Bridge Calico Printing Co. v. Green and Smith [1879] 5 Q.B.D 109.

[11] Erlanger v. New Sombrero Phosphate Co. [1878] 3 App. Cas. 1218.

[12] As to the meaning of "floatation" see Gifford and Willoughby's M. Expedition Co. [1899] 15 T.L.R. 24 C.A., on appeal [1902] 18 T.L.R. 274, and Torva E. Syndicate v. Kelley [1900] 16 T.L.R. 495 P.C.

[13] Emma Silver Mining Co. v. Lewis & Son [1879] 4 C.P.D. 396; Re Great Wheal Polgooth Co. [1883] 53 L. J. (Ch.) 42, 49 L. T. 20.

[14] Twycross v. Grant [1877] 2 C. P. D. 469.

He controls the formation and future of the company, and it is this *control* which lies at the root of the fiduciary relation of the promoter to the company. Nor is he the less a promoter if all or most of these activities are performed nominally by a company which he controls. But a person who has done much less than this—takes a much less prominent part—may bring himself within the meaning of the term and may be held liable as promoter"[1].

Term ambiguous.

The term is however ambiguous and it is necessary to ascertain in each case what the so-called promoter really did, before his legal liabilities can be actually ascertained[2]. The question whether a person is or is not a promoter is a question of fact[3]. A person who as principal procures or aids in procuring the incorporation of a company is generally a promoter thereof[4], and he does not escape from liability by acting through agents[5]. But persons who act only professionally, such as counsel, solicitors, accountants, printers of prospectus and the like are not promoters[6].

Promoter.

It is a question of fact in each case as to at what time a person begins or ceases to be a promoter[7]. A promoter does not cease to be such by reason only of the formation of the company and the appointment of directors, but only when the directors take into their own hands what remains to be done in the way of forming the company[8].

Principles governing position of directors and promoters.

The principles governing the position of directors and promoters and their acts have thus been laid down by Lord Lindley[9]: "The first principle is that in equity the promoters of a company stand in a fiduciary relation to it and to those persons whom they induce to become shareholders in it, and cannot in equity bind the company by any contract with themselves without fully and fairly disclosing to the company all material facts which the company ought to know. *Erlanger* v. *New Sombrero Phosphate* Co. [1878] 3 App. Cas. 1218 is the leading authority in support of this proposition."

"The second principle is that a company when registered is a corporation capable by its directors of binding itself by a contract with themselves if all material facts are disclosed. *Salomon* v. *Salomon & Co.*[10] is the leading authority for this proposition."

"The third principle is that the directors of a company acting within their powers and with reasonable care and honesty in the interest of the company may suffer by reason of their mistakes or errors in judgment. *Overend, Gurney & Co.* v. *Gibb*[11] is the leading authority on this head."

"A fourth principle not confined to companies, but extending to them, is that a contract can be set aside in equity in proof that one party induced the other to enter into it by misrepresentations of material facts, although such misrepresentations may not have been fraudulent."

"A fifth principle is that a voidable contract cannot be rescinded or set aside after the position of the parties has been changed so that they cannot be restored to their former position. Fraud may exclude the application of this principle, but I know of no other exception."

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[1] See also National L. S. Registration Bank v. Velu Mudaliar [1938] Mad. 192, [1938] M. 154.

[2] Lydney &c. Co. v. Bird [1886] 33 Ch. D. 85 C. A.

[3] Twycross v. Grant [1877] 2 C.P.D. 469.

[4] Hereford &c. Co. [1876] 2 Ch. D. 621 C. A.

[5] Phosphate Sewage Co. v. Hartmont [1877] 5 Ch. D. 394 C.A.

[6] Great Wheal Polgooth Co. (supra).

[7] Ladywell Mining Co. v. Brookes [1887] 35 Ch. D. 400 C.A.

[8] Eden v. Ridsdale's Ry. Lamp Co. [1889] 23 Q.B.D. 308 C.A.

[9] Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate [1899] 2 Ch. 392 at p. 422.

[10] [1897] A. C. 22.

[11] [1872] L. R. 5 H. L. 480.

Liabilities of directors and promoters.

A promoter cannot retain any profit made out of a transaction to which the company is a party, without full disclosure. The company can affirm the contract and sue for an account and profit with interest 1 or bring an action for rescission of the contract where the other contracting party can be restored to his original position 2. The liability of the promoter or director may also be enforced in a winding up proceeding 3. A gift of shares by a promoter to a director must be accounted for by the director to the company and the company has the option of claiming the thing given or its highest value when held by the director 4.

A promoter may however make a profit upon a sale to the company, even if he is also a director, if he makes full disclosure to the company 5. Whether a promoter is really acquiring any assets as a trustee for the company or the intended company is a question of fact. Where the scheme has throughout been that promoters are to sell to the intended company at a profit the assets they are acquiring, the natural inference of fact is that in respect of those assets he is not intending to be a trustee for the company, but is intending to occupy the position of a vendor. The relationship, when completed with promoters, involves certain fiduciary duties, but cannot be identified with ordinary trusteeship 6. If there is no intention of making a public issue of shares and no such issue is in fact made, the knowledge by all the directors and members of the fact will exonerate the promoters even where the purchase price has been greatly inflated 7. But promoters cannot relieve themselves of their general equitable obligations by any astuteness in the drafting of the articles 6.

Their fiduciary relation.

Persons who purchase property and then create a company to purchase from them the property they possess, stand in a fiduciary position towards that company and must fully state to the company 8 the facts which apply to the property and would influence the company in deciding on the reasonableness of acquiring it 9.

Principles of the law of agency and trustee apply.

Although strictly speaking a promoter cannot be considered an agent or trustee for the company, the company not being in existence at the time, yet the principles of law of agency and trustee-ship are applicable to his case and he is accountable for all moneys obtained by him from the funds of the company without its knowledge 10. The fact that the promoter is acting as agent for the vendors in getting up a company for the purchase of their property does not exonerate him from accounting to the company, when formed, for any secret profit made by him 10. In estimating the amount of the secret profit the

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1. Gluckstein v. Barnes [1900] A. C. 240.
2. Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate (supra) ; Cross v. Mutual R. S. Insurance Co. [1904] 21 T. L. R, 15 ; Mutual R. L. I. Co. v. Foster [1904] 20 T. L. R. 715 H. L.
3. Pearson's case [1877] 5 Ch. D. 336 C. A.
4. Eden v. Ridsdale's Ry. Lamp Co. (supra).
5. Erlanger v. New Sormbrero Phosphate Co. (supra).
6. Omnium Electric Palaces v. Baines [1914] 1 Ch. 322.
7. Attorney General for Canada v. Standard Engineering Trust Co. [1911] A. C. 498 ; Express Engineering Works [1920] 1 Ch. 466.
8. Twycross v. Grant (infra).
9. Erlanger v. New Sombrero Phosphate Co. [1878] 3 App. Cas. 1218 ; Twycross v. Grant [1877] 2 C.P.D. 469.
10. Lydney &c. Co. v. Bird [1886] 33 Ch. D. 85 C.A.

promoter is however entitled to be allowed the legitimate expenses incurred by him in forming and bringing out the company, such as those for the reports of surveyors, the charges of solicitors and brokers, and the costs of advertisement, but not a sum of money which he has expended in obtaining from another person a guarantee for the taking of shares 1.

Promoter's liability to account.

Any profit which the promoter makes after he has begun to promote the company and the benefit of any contracts into which he enters during that period belongs to the company 2. Where a promoter is to account to the company for secret profits, the measure of damages is the amount of profit made by the promoter 3; but he is allowed to deduct all reasonable expenses and is liable only for the net profits made 4.

Immediately after registation of the company a promoter is under fiduciary obligations not only to the company as originally constituted, but also as consisting of future allottees and therefore the promoters and directors will not be protected by disclosures made before the public have joined the company 5. Even if all the facts are known to all the members of the company at the time the contract is made, but a misleading prospectus is subsequently issued by the promoters to the public inviting them to join the company, the promoters will be liable 6.

Personal liability of promoters.

A promoter, even though he expressly purports to act as agent or trustee, is personally liable upon all contracts made with him on behalf of the intended company 7, until the contract has been performed or rescinded by either party under some power in the contract or by the consent of all parties or until the company has, with the consent of the other contracting party, undertaken the promoter's liability 8.

Legitimate expenses when payable.

Although not bound to do so, the directors may pay a promoter legitimate expenses incurred by him in forming and bringing the company out 9. Even where there is a general power to pay preliminary expenses to a promoter, payment should not be made without vouchers or investigation 10. But if the memorandum or articles empower directors to pay a specific sum for the costs and expenses of promoters, payment may be made without taxation 11. Directors may be made personally liable for sums improperly paid to promoters 12.

Right of indemnity.

A promoter however has no right of indemnity against the company in respect of any obligation undertaken on its behalf before its incorporation, stipulating that he shall be paid a certain sum as the preliminary expenses 9. Thus inspite of such a provision, the solicitor who prepares a memorandum or articles of association cannot sue the company for his costs for doing so 13, and the promoter or his solicitor who has paid the fees on registering the company cannot re-

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1. Lydney &c. Co. v. Bird [1886] 33 Ch. D. 85 C. A.
2. Ladywell Mining Co. v. Brookes [1887] 35 Ch. D. 400.
3. Leeds and Hanley Theatres of Varieties [1902] 2 Ch. 809.
4. Lydney &c. Co. v. Bird (supra).
5. Leeds & Hanley Theatres of Varieties [1902] 2 Ch. 809 ; Gluckstein v. Barnes [1900] A.C. 240.
6. Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate (supra).
7. Burton v. Hutchinson [1849] 2 Car. & Kir. 712.
8. English & Colonial Produce Co. [1906] 2 Ch. 435 C. A.
9. Melhado v. Porto Alegre Ry. Co. [1874] L. R. 9 C. P. 503.
10. Englefield Colliery Co. [1878] 8 Ch. D. 388.
11. Croskey v. Bank of Wales [1863] 4 Giff. 314.
12. Anglo-French Co-operative Society [1882] 21 Ch. D. 492.
13. English & Colonial Produce Co. (supra).

cover them from the company 1. Nor is the promoter or any person employed by him entitled to sue the company in respect of any payment for services rendered or expenses incurred before its incorporation, unless after incorporation it expressly agrees with him to make such payment or from other facts the Court can infer a new contract to re-imburse him 2 ; for a company cannot ratify an agreement purporting to have been made on its behalf before its incorporation 3, and its act cannot be evidence of a "new agreement" to re-imburse the promoter if they can be shown to have been made with reference to the obligations of the company to idemnify a third person 4. Nor is a company bound in equity to pay the preliminary expenses because it has adopted and derived benefit from services previous to incorporation 5. Whether there is a fresh contract between the company and the promoters after incorporation is a question of fact 6.

Remedy of aggrieved shareholder.

To obtain damages from the directors or promoters an aggrieved shareholder may bring an action after the company has gone into liquidation; but he must show that he has suffered damage, for "fraud without damage or damages without fraud will not found an action" 7. But the Court will direct an inquiry as to damages upon proof of the falsity of material statements 8. If the company failed within a short time after the issue of the prospectus, that will be taken as *prima facie* evidence that the shares were not worth par 9.

A single debenture-stock holder cannot proceed in tort against persons who have acted as directors of a debtor company or of the company which owns all shares of the debtor company. In principle such an action cannot be sustained. A representative action on behalf of all the stock holders, an action in the name or on behalf of the company, proceedings to compel the trustees to do their duty and take steps to protect the security or proceedings against individual directors for misfeasance to the company give a sufficient well established body of remedies 10.

Liability is joint and several.

Promoters are jointly and severally liable in respect of secret profits 11. When two co-promoters join in the issue of a prospectus inviting subscription for shares with knowledge that a statement contained in that prospectus is untrue and damages are recovered by a person induced to take shares by that statement against one of them, he is entitled to contribution from the other 12 under this section.

Position of co-promoters.

Co-promoters are not partners, nor is one promoter necessarily the agent of the others or the act and admission of one evidence against the others 13. The death of a promoter does not release his estate from obligations he has undertaken to find capital 14, nor from liability in respect of breach of fiduciary duties or moneys secretly received and retained by him 15.

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1. National Motor Mail Coach Co., Clinton's Claim [1908] 2 Ch. 515 C. A.
2. Empress Engineering Co. [1880] 16 Ch. D. 125 C. A.
3. Natal Land &c. Co. v. Pauline Colliery Syndicate [1904] A. C. 120 P. C.; but see notes to s. 23. *ante*. 4. Rotherham Alum &c. Co. [1883] 25 Ch. D. 103 C. A.
5. English & Colonial Produce Co. (supra).
6. Browning v. Great Central Mining Co. [1860] 5 H. & N. 856.
7. Pasley v. Freeman 2 Sm. L. C. 71 ; Macleay v. Tait [1906] A. C. 24 (26).
8. Mc Connel v. Wright [1903] 1 Ch. 546.
9. Per Lord Lindley in Shepheard v. Broome [1904] A. C. 342.
10. Clark v. Urquhart [1930] A. C. 28, 53.
11. Gluckstein v. Branes [1900] A. C. 240.
12. Gerson v. Simpson [1903] 2 K. B. 197.
13. See Lindley on Companies 6th ed. p. 194 and Reynell v. Lewis [1846] 15 M. & W. 517 ; Maddick v. Marshall [1864] 16 C. B. N. S. 387.
14. Re Worthington, *ex. parte* Pathe Freres [1914] 2 K. B. 299.
15. Concha v. Murreitta [1889] 40 Ch. D. 543.

In the absence of an express contract one of several promoters cannot sue another for remuneration for his promoting services [1], but a person assisting promoters can sue for remuneration for his services, if there is a contract to pay for them [2]. Promoters are not, as such, agents or liable for the acts of each other; but an authority to act for each other may be inferred from the terms of a public prospectus or from contract [3].

When a person becomes promoter.

Company's right of rescission.

A man is not necessarily a promoter because at the time he acquires property he contemplates that at some future time he may form a company to purchase the property [4], and if he does not become a promoter until after the acquisition, his only duty is to see that the amount of his profit is known to the purchasing company; otherwise the company may rescind the contract [5]. But if he has disclosed that he is making a profit and fails to make known the amount, rescission is the only remedy for the company [4]. If that has become impossible, the profit cannot be recovered nor damages had [4].

If the purchase is not completed by conveyance of the property, recission may be had, whether the misrepresentation was made fraudulently or innocently [6]; but where the purchase has been completed, rescission can only be ordered when fraud is established [7].

If at the time of acquiring the property the vendor was also a promoter, the company can either rescind the contract or retain it reducing the purchase money to the amount the promoter actually spent upon the purchase in relation to the property [8].

Remedy against vendors.

If the company cannot restore the property in the same state as that in which it was bought, there is no remedy against the vendors except by an action for deceit [9]. Lindley M. R. said: "Fraud may exclude the operation of the principle that a voidable contract cannot be rescined or set aside after the position of the parties has been changed, so that they cannot be restored to their former position" [10].

Distinction between motive and intent.

In considering whether a statement is misleading, the prospectus must be considered as a whole, and if its tendency is to deceive, there is no need to point out some one or more statement which are absolutely false [11]. The motive with which the statement is made is immaterial, for a man is liable for a false statement knowingly made, even if he had no intent to defraud [12]. "If with intent to lead the plaintiff to act upon it they put forth a statement which they knew may bear two meanings, one of which is false to their knowledge, and thereby the plaintiff putting that meaning on it is misled, I do not think they can escape by saying he ought to have put the other" [13].

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[1] Holmes v. Higgins [1822] 1 B. & C. 74.
[2] Mant v. Smith [1859] 4 H. & N. 324.
[3] Mc Ewan v. Campbell [1857] 2 Macq. 499.
[4] Lady Forrest Gold Mine [1901] 1 Ch. 582.
[5] Ladywell Mining Co. v. Brookes [1887] 35 Ch. D. 400.
[6] Redgrave v. Hurd [1881] 20 Ch. D. 1; New Bigging v. Adam [1887] 34 Ch. D. 582.
[7] Seddon v. North Eastern Salt Ltd. [1905] 1 Ch. 326.
[8] Gluckstein v. Barnes (supra).
[9] Sheffield Nickel &c. Co. v. Unwin [1877] 2 Q.B.D. 214.
[10] Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate [1899] 2 Ch. 392 at p. 423.
[11] Smith v. Chadwick [1884] 20 Ch.D. 27, on appeal 9 App. Cas. 187.
[12] Derry v. Peek [1889] 14 App. Cas. 337; Smith v. Chadwick (supra) at p. 201.
[13] Smith v. Chadwick (supra) at p. 201.

Construction of prospectus.

Lord Lindley said [1] : "If a man uses language which taken in its natural sense conveys a wrong impression, he can not be heard to say he did not intend to deceive." A man is answerable for what any one might reasonably suppose to be the meaning of the words he has used [2]. But the plaintiff must prove that he understood the statement in the sense in which it is false [3]. The prospectus is read as a whole and "people cannot be expected," as pointed out by Lord Halsbury L. C. "to analyze their own mental sensation so minutely as to be able to explain what particular statement had induced them to become subscribers," [4].

What is a false statement.

A general commendation however is not a false statement even if too highly coloured ; but to say that something is expected when in reality it is not, or that the directors have an intention to do something when they have not, is a mis-statement of fact [5]. A statement that property has been acquired, which has not in fact then been acquired, will be a ground for an action against directors, even if the property is acquired a few days after the allotment of shares [6]. The speeches of a chairman of directors at a meeting of the company or reports issued to shareholders or furnished by agents of the directors, are not evidence against the company [7].

Representation need not be direct.

It is not necessary that the representation should be directed to the person injured. It is sufficient if it be made to some one with the intent that it shall be repeated to and acted upon by the person who is subsequently injured [8].

Misrepresentation must be one of fact.

A misrepresentation, to entitle an allottee to relief, must be one of fact [9]. Where it was stated that more than one half of the first issue of shares had already been subscribed for when in fact such subscription was a sham one, this was held to be a misrepresentation entitling the applicant to recission [10]. This too was held in the following cases:—where it was falsely stated that the surplus assets as appearing by the last balance-sheet amounted to upwards of 10,000 *l* ; where it was falsely stated that a particular mine was in full operation and making large daily returns [11] ; where it was falsely represented that the patented articles were a commercial success [12] beyond the experimental stage [13] ; where a promoter who was to get a part of the purchase money was untruly put forward as one of the vendors [14] ; where it was stated untruly that the vendor was to pay all the preliminary expenses [1]; where it was stated untruly that the company was the sole manufacturer of asbestos in France and had a practical monopoly [2]; where it was stated that no promotion money was to be paid, while in truth a large sum was to be paid in this way [3].

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[1] Arnison v. Smith [1889] 41 Ch.D. 348 at p. 372.

[2] Per Cotton L.J. in Arkright v. Newbold [1881] 17 Ch.D. 301 at p. 322.

[3] Smith v. Chadwick [1884] 20 Ch.D. 27, on appeal 9 App. Cas. 187.

[4] Macleay v. Tait [1906] A.C. 24 at p. 26.

[5] Karberg's case [1892] 3 Ch. 1 at p. 11.

[6] Mc Connel v. Wright [1903] 1 Ch. 546.

[7] Devala P. Gold Mining Co. [1883] 22 Ch. D. 593 ; Djambi Rubber Estates [1912] W.N. 192, affd. on appeal 29 T.L.R. 28.

[8] Andrews v. Mockford [1896] 1 Q.B. 372.

[9] Eaglesfield v. Londonderry [1877] 4 Ch.D. 693 at p. 702.

[10] Ross v. Estates Investment Co. [1868] 3 Ch. App. 682 ; Kent v. Freehold Land Co. [1868] 3 Ch. App. 493. In this case it was held that a member could not get relief after presentation of a winding-up petition.

[11] Reese River Silver Mining Co. v. Smith [1869] 4 H. L. 64 ; see also Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate [1899] 2 Ch. 392.

[12] Stirling v. Passburg Grains Syndicate [1891] 8 T. L. R. 71.

[13] Greenwood v. Leathershod Wheel Co. [1900] 1 Ch. 421.

[14] Capel & Co. v. Sims S. C. Co. [1888] 57 L. J. Ch. 713.

What is fact.

The statement that something will be done is not a statement of an existing fact [4]; but a representation of belief, opinion, expectation or intention is a representation of fact, for "the statement of a man's mind is as much a matter of fact as the state of his digestion" as observed by Lord Justice Bowen [5]. There is no safety in ambiguous statements which in one sense are true, but in another sense are not true—"which keep the word of promise to the ear and break it to the hope," for the rule is that the applicant is entitled to put any reasonable construction on such a statement and if according to that construction it is untrue, he is entitled to relief [6].

Report of expert.

If the prospectus is based upon the report of an expert which contains false statements of fact, a person who applied for shares relying on the report may rescind the contract, unless the directors had clearly warned the public that they did not vouch for the accuracy of the report [7]. Concealment in a prospectus may amount to fraud [8].

What is a material statement.

A statement in a prospectus as to the persons who are to be directors is a material statement, and if untrue, a person subscribing on the faith of it is *prima facie* entitled to rescind [9]. So, if before the allotment some of the directors mentioned in the prospectus retire and the fact of retirement is not communicated to the allottee, he would be entitled to rescind the contract and claim a refund of the money paid by him [10]. It is misrepresentation to state in a prospectus that share capital has been "subscribed" when it has only been allotted in fully paid up shares [11], or that the company has contracted for purchase of a property, when in fact there is negotiation only [12].

What is "untrue statement."

A misleading statement in a prospectus is an "untrue" statement and the liability imposed by the section is absolute. Persons issuing such statements can only escape liability under the statute by proving that they had "reasonable ground" for believing and did in fact believe the statement to be true. The Court will refuse to give effect, as against a shareholder, to a tricky waiver clause in a prospectus or application form [13]. "I quite agree in this", observed Lord Blackburn, "that whenever a man inorder to induce a contract says that which is in his knoweldge untrue with the intention to mislead the other side, and induces them to enter into the contract, that is down right fraud......I further agree in this, that when a statement or representation has been made in the *bona fide* belief that it is true, and the party who has made it afterwards comes to find out that it is untrue, and discovers what he should have said, he can no longer honestly keep up that silence on the subject after that has come to his knoweldge thereby allowing the other party to go on, upon a statement which was honestly made at the time when it was made, but which he has not now retracted when he has become aware that it can be no longer honestly persevered in ; that would be fraud too...And I go on further still to say what is perhaps not quite so clear, but certainly it is my opinion, where there is a duty or an obligation to speak, and a man in breach of that duty or obligation holds his tongue and does not speak, and does not say the thing he was bound to say, if that was done with the intention of inducing the other party to act upon the belief that the reason why he did not speak was because he had nothing to say, I should be inclined myself to hold that that was fraud also" 1.

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[1] Re Liberian Govt. Concessions Co. [1892] 9 T. L. R. 136.

[2] Hyde v. New Asbestos Co. [1891] 8 T. L. R. 121.

[3] Lodwick v. Earl of Perth [1884] 1 T. L. R. 76.

[4] Beattie v. Ebury [1872] 7 Ch. App. 777 at p. 804; Bellairs v. Tucker [1884] 13 Q. B. D. 562.

[5] Edgington v. Fitzmaurice [1885] 29 Ch. D. 459 at p. 483.

[6] Hallows v. Fernie [1868] 3 Ch. App. 467 at p. 476; Arkwright v. Newbold [1881] 17 Ch. D. 301; Smith v. Chadwick [1884] 9 App. Cas. 187 at p. 195.

[7] Mair v. Rio Grande Rubber Estates [1913] A. C. 853 at p. 872; Pacaya Rubber &c. Co. [1914] 1 Ch. 542.

[8] See Christenville Rubber Estates [1911] W. N. 216, 28 T. L. R. 38; Shepheard v. Broome [1904] A. C. 342. Pacaya Rubber & Produce Co. [1914] 1 Ch. 542; Mair v. Rio Grande Rubber Estates [1913] A. C. 853.

[9] Scottish Petroleum Co. [1883] 23 Ch. D. 413; Kent County Gas Co. [1913] 1 Ch. 92.

[10] Venkataramayya v. Industrial Bank [1930] M. 325, 124 I. C. 193.

[11] Arnison v. Smith [1889] 40 Ch. D. 567.

[12] Ross v. Estates Investment Co. [1868] 3 Ch. App. 682.

[13] Greenwood v. Leathershod Wheel Co. (supra).

A misstatement of intention is a misstatement of fact, and if the allottee was misled by it, an action of deceit may be founded on it. Where an allottee has been induced to take shares or debentures both by his own mistake and by a material misstatement by the directors, and the former receives injury thereby, the latter may be made liable in an action for deceit 2.

Notice.

The provisions in the articles or in Table A apply only to notices relating to the ordinary business of the company, and service in the way there pointed out is not sufficient for the purpose of fixing a shareholder with knowledge of a misrepresentation which would entitle him to repudiate his shares, unless he had been guilty of laches after notice of the misrepresentation 3.

If the prospectus states the effect or terms of a document and offers it for inspection, the intending subscriber is not bound to inspect it. Jessel M. R. observes : "When men issue a prospectus in which they make statements of the contracts made before the formation of the company, and state that the contracts may be inspected at the office of the solicitors, it has always been held that those who accepted these false statements as true, were not deprived of the remedy merely because they neglected to go and look at the contracts" 4. "It was argued for the company", said Lord Watson, "that inasmuch as the contracts for the purchase of the concession were generally referred to towards the end of the prospectus, the respondent must be held to have notice of their contents. This appears to be one of the most audacious pleas that ever was put forward in answer to a charge of fraudulent misrepresentation. When analysed it means simply that a person who has induced another to act upon a statement made with intent to deceive must be relieved from the consequences of his deceit, if he has given his victim constructive notice of a document the perusal of which would expose fraud" 5.

Non-disclosure.

In the case of non-disclosure however, says Eve J., "there must be something more than mere non-disclosure proved before misrepresentation is established ; it must, I think, be shown that the non-disclosure is the non-disclosure of something the disclosure of which would falsify some statement in the prospectus" 6.

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1. Brownlie v. Campbell [1880] 5 App. Cas. 925, 950.
2. Edgington v. Fitzmaurice [1885] 29 Ch. D. 459 C. A.
3. London & Staffordshire Fire Insurance Co. [1883] 24 Ch D. 149.
4. Redgrave v. Hurd [1881] 20 Ch. D. 1 at p. 14 ; see also Smith v. Chadwick [1884] 9 App. Cas. 187, 20 Ch. D. 27.
5. Aaron's Reefs v. Twiss [1896] A. C. 273 at p. 287.
6. Christenville Rubber Estates (supra).

An underwriter who takes shares relying on the names of the directors cannot obtain rescission on the ground of defects in the prospectus 1; but it is not necessary for him to show that the statement complained of was fraudulently made or was known to the directors to be untrue 2.

Effect of director's omission & adoption.

A director who was aware that a prospectus was being issued to the public, but did not trouble to read it, abstained from inquiry as to its contents and gave no notice under the Act, is responsible for the contents of the prospectus 3; and a director who subsequently adopted a prospectus he had not originally approved was also held liable 4.

Their duty.

If the directors discover a mistake in the prospectus, it is their duty to point it out in unambiguous terms, and not merely to send a new prospectus correctly stating the facts 5. As to the measure of damages, see the cases noted below 6.

If the misstatement is due to a mistake of law, the fact that the directors took the opinion of counsel will not protect them 7.

Where the directors make a statement to existing shareholders, they have a higher duty to such shareholders than to the general public and may come under liability for dereliction of that duty in a case falling short of actual fraud 8.

Who can sue.

Those persons who buy in the market cannot, as a general rule, sue under this section, nor will false report made by directors to a general meeting entitle a person who buys shares on the faith of it *from a shareholder* to rescind his contract 9. But this rule does not apply where it is shown that the prospectus was intended and used to induce purchasers in the market to buy the shares 10. Where however a person applied for shares on looking at a proof prospectus which was subsequently issued, it was held that he could not sue for loss sustained by reason of the statements alleged to be untrue, as he had agreed to underwrite the shares before the issue of the prospectus 11.

If one prospectus fulfils the statutory conditions, but another does not, only those who subscribed on the latter are entitled to relief 12.

Joinder of parties.

A number of persons who subscribe on the faith of the same prospectus may join as plaintiffs in one action; but each must prove separately that he was induced to take the shares by the untrue statements in the prospectus 13. Claims for rescission against the company and damages against the directors may also be included in one action 14.

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1. Batey v. Keswick [1901] W. N. 167, 85 L. T. 18.
2. Redgrave v. Hurd (supra); Kerberg's case [1892] 3 Ch. 1 at p. 13; Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate [1899] 2 Ch. 392 at p. 423.
3. Drincqbier v. Wood [1899] 1 Ch. 393.
4. Peek v. Derry [1887] 37 Ch. D. 541 at p. 569.
5. Arnison v. Smith [1889] 41 Ch. D. 348.
6. Ibid p. 363; Peek v. Derry (supra); Twycross v. Grant [1877] 2 C. P. D. 469.
7. Per Lord Lindley in Shepheard v. Broome [1904] A. C. 342.
8. Nocton v. Ashburton [1914] A. C. 932 at pp. 955-56.
9. Peek v. Gurney [1873] 6 H. L. 377.
10. Andrews v. Mockford [1896] 1 Q. B. 372.
11. Dyster, Nalder & Co. v. Leaven [1915] 140 L. T. Jo. 50.
12. Roussell v. Burnham [1909] 1 Ch. 127.
13. Arnison v. Smith [1889] 41 Ch. D. 348.
14. Frankenburg v. Great Horseless Carriage Co. [1900] 1 Q. B. 504.

Contribution. A director who has paid damages for loss arising out of misrepresentation in the prospectus can recover contribution from co-directors who might have been liable in the first instance 1. Where the directors know that one of their body is obtaining subscription for the shares, the company is responsible for representations made by him 2.

Actio personalis &c. The principle *actio personalis moritur cum persona* applies where no property, proceeds or value of property have been received by the deceased director and added to his estate 3. Where a person who has taken shares on the faith of a fraudulent prospectus dies, his executors however can commence or continue an action for the loss suffered by his estate 4; but where the director or promoter charged dies, executors cannot be sued unless his estate has benefited by the fraud 5, and the action will fail unless a complete judgment has been obtained for an ascertained amount before the defendant's death 6.

Criminal liability of director. Directors may be convicted of conspiracy by inducing persons to subscribe for shares or debentures by fraudulent statements 7. Statements made to the directors by the vendors or promoters do not alone afford reasonable grounds for believing the truth of the matter stated 8. If the statement complained of is contained in a report set out in the prospectus, the company is responsible if the report was fraudulent on the part of the company's agent 9.

The directors of a new company had conspired to deceive the members of the committee of the Stock Exchange and to induce them, contrary to the intent of certain of their rules, to order a quotation of the shares of the company in the official list of the Stock Exchange and thereby to induce members of the public to believe that the said company had complied with the said rules so as to entitle it to have shares quoted in the official list of the Stock Exchange: *held*, the averments, if proved, sufficiently supported the charge of criminal conspiracy 10.

Effect of misreading prospectus. Where a person applies for shares on the misreading of the prospectus and not on the faith of its representation, he is not entitled to resile from the contract 11. A person, who before the registration of a company applies for shares on the faith of a prospectus, ought to be treated as having become aware of any variations between the prospectus and the memorandum of association at the earliest possible opportunity 12.

Allotment.

Restriction as to allotment. **101.** (1) *No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised by the issue of share capital in order to provide the sums or, if any part thereof*

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1. Gerson v. Simpson [1903] 2 K. B. 197 C. A.
2. Hilo Manufacturing Co. v. Williamson [1911] 28 T. L. R. 164 C. A.
3. Geipel v. Peach [1917] 2 Ch. 108.
4. Twycross v. Grant, No. 2 [1879] 4 C. P. D. 40.
5. Peek v. Gurney (supra).
6. Phillips v. Homfray [1883] 24 Ch. D. 439; see also Davoren v. Wootton [1900] 1 I. R. 273.
7. Queen v. Aspinall [1876] 2 Q. B. D. 48 C. A.
8. Adams v. Thrift [1915] 1 Ch. 557, affirmed by C. A. in [1915] 2 Ch. 21.
9. Mair v. Rio Grande Rubber Estates [1913] A. C. 853.
10. Reg. v. Aspinall [1876] 36 L. T. 297.
11. Bansidhar v. Tata Power Co. [1925] B. 272, 27 Bom. L. R. 330, 87 I. C. 547.
12. Peel's case [1867] 2 Ch. App. 674.

is to be defrayed in any other manner, the balance of the sum required to be provided in respect of the matters specified in sub-section (2) has been subscribed, and the sum of at least five per cent. thereof has been paid to or received in cash by the company.

(2) The matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following, namely :—

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue ;

(b) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company ;

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters, and

(d) working capital.

(2A) The amount referred to in sub-section (1) as the amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.

(2B) All moneys received from applicants for shares shall be deposited and kept in a scheduled bank as defined in the Reserve Bank of India Act, 1934, until returned in accordance with the provisions of sub-section (4) or until the certificate to commence business is obtained under section 103.

(2C) In the event of any contravention of the provisions of sub-section (2B) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding five hundred rupees.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of one hundred and *eighty* days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within one hundred and *ninety* days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of seven per cent. per annum

from the expiration of the one hundred and *nintieth* day : Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say)—

(*a*) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment ; or

(*b*) if no amount is so fixed and named, the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash ;

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

(8) Sub-section (7) shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act.

Amendment. By the Companies (Amendment) Act, 1936, sub-sections (1), (2), (2A), (2B) and (2C) have been substituted for the original sub-sections (1) and (2). This was suggested by s. 39 of the English Act of 1929. By the said amending Act in sub-s. (4) for the word "twenty" the word "eighty", for the word "thirty" the word "ninety" and for the word "thertieth" the word "ninetieth" have been substituted. For the effect of these amendments see Introduction.

The original sub-sections (1) and (2) ran thus :

Restriction as to allotment. 101. (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely :—

(*a*) the amount (if any), fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment ; or (*b*) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received in cash by the company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

Scheduled banks.

Sub-s. (2B). The following is the list of the scheduled banks in the Second Schedule to the Reserve Bank Act II of 1934, and the application moneys must be kept in deposit with one of such banks.

Ajodhia Bank,
Allahabad Bank,
American Express Company, Inc.,
Banco Nacional Ultramarino,
Bank of Baroda,
Bank of Behar,
Bank of China,
Bank of Communications,
Bank of Hindustan,
Bank of India,
Bank of Taiwan,
Bank of Upper Burma,
Bengal Central Bank,
Calcutta Commercial Bank,
Calcutta National Bank,
Canara Bank,
Canara Banking Corporation,
Canara Industrial and Banking Syndicate,
Central Bank of India,
Chartered Bank of India, Australia and China,
Comilla Banking Corporation,
Comilla Union Bank,
Comptoir National D' Escompte de Paris,
Devkaran Nanjee Banking Co.,
Dinajpore Bank,
Eastern Bank,
Grindlay & Company, Ltd.,
Hongkong & Shanghai Banking Corporation,
Imperial Bank of India,
Indian Bank,
Indian Overseas Bank,
Indo-Commercial Bank,
Industrial Bank of Western India,
International Bank of India,
Jwala Bank,
Karnani Industrial Bank,
Laxmi Bank,

Lloyds Bank,
Mercantile Bank of India,
Mitsui Bank,
Mohaluxmi Bank,
Nadar Bank,
Nath Bank,
National Bank of India,
Nedungadi Bank,
Netherlands India Commercial Bank,
Netherlands Trading Society,
National City Bank of New York,
New Citizen Bank of India,
New Standard Bank,
Noakhali Union Bank,
Oudh Commercial Bank,
Oversea Chinese Banking Corporation,
Palai Central Bank,
Pioneer Bank,
Punjab and Sind Bank,
Punjab Co-operative Bank,
Punjab National Bank,
Simla Banking & Industrial Co.,
Thomas Cook & Sons, (Bankers),
Union Bank of India,
United Industrial Bank,
U. Rai Gyaw Thoo & Co., and
Yokohama Specie Bank.

Contract to take share.

A contract to take shares in a company is generally constituted by an application and an allotment notified 1 to the applicant, the application being an offer and the allotment being its acceptance. "The course of decisions has determined that to obtain a binding allotment, there must be application, an allotment and a communication of that allotment 2. A binding contract is not made until the acceptance is notified to the applicant 3. If the notice of allotment is sent by post, the acceptance is deemed to be notified when the notice is posted, even though it never reaches the applicant 4, provided the offer is one which can be accepted by a letter sent through post 5. An allottee will not be constituted a member unless he has notice of the fact of allotment. A formal notice is however not necessary if he is made aware of the fact 6. The mere entry of his name on the register of members is not sufficient for the purpose 6. Where allotment was made long after the application and notice of allotment was said to have been sent just before the company went into liquidation and it was not shown when the name of the applicant was put on the register of

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1. Pellat's case [1867] 2 Ch. App. 527, 535 ; Grissell's case [1866] 1 Ch. App. 528.
2. Per Lord Justice Page-Wood in Universal Banking Co., Roger's case [1868] 3 Ch. App. 633 (637), 41 L. T. 298 ; see also Mohan Lal v. S. G. Cotton Mills [1900] 4 C. W. N. 369.
3. Nicol's case [1885] 29 Ch. D. 421 ; Pellat's case (supra).
4. Harris's case [1872] 7 Ch. App. 587.
5. Household Fire Insurance Co. v. Grant [1879] 4 Ex. D. 216 C A. ; Henthorn v. Fraser [1892] 2 Ch. 27 at p. 33 ; Bruner v. Moore [1904] 1 Ch. 305 at p. 316.
6. Gunn's case [1867] 3 Ch. App. 40.

members, it was held that the applicant was not a member of the company [1]. Allotment should be made within a reasonable time and a person is not bound to accept an allotment made after the lapse of a reasonable time [2]. As to the meaning of allotment, see the cases noted below [3].

Allotment.

An allotment is none the less an allotment although money paid by the applicant is subsequently returned on its being found that the prospectus contained misleading statements [4]. Allotment once made and communicated cannot be cancelled [5], as that would be reducing the capital of the company [6].

Allotment and transfer.

An allotment of shares is an act of the company by which the applicant for shares becomes the holder of unappropriated shares. While shares standing in the name of A cannot be allotted to B even with A's consent, such shares may be *transferred* by A to B, the company's power of interference in respect of such transfer being determined by its articles of association [7].

Offer & acceptance may be oral.

The offer or the acceptance may be oral [3]. Before notification of the acceptance is received [8], or if sent by post, posted [9], the offer may be withdrawn and repayment of the deposit money claimed [10]. Even if the offer is made in writing, it may be withdrawn orally [11]. But an withdrawal is effective only when it reaches the company and not at the time of posting [12]. An allotment made without application, the allotment money not being paid, is illegal and the directors who make such allotment are guilty of misfeasance [13]. They are also guilty of misfeasance if they are party to a calculated and deliberate fraud in the floatation of the company and in the conduct of its business [13].

Effect of mistake.

There is no contract however where the offer to take shares is made by a man who believes it to be a totally different company [14].

Conditional allotment.

An allotment may be made conditionally. In such a case the allottee does not become a member, until the condition is performed, even if his name is (conditionally) registered [15]. But where there is a conditional application and an unconditional allotment, there is no contract, as the parties are not *ad idem* [16]. Where the application is conditional, the directors are not at liberty to allot unconditionally [17]. An allottee may be estopped from contending that the

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1. Radhe Sham v. Prabh Dayal [1936] L. 16, 161 I. C. 294.
2. Indian C. & N. Trading Co. v. Padamsey [1934] B. 97, 36 Bom. L. R. 32, 150 I. C. 467.
3. Levita's case [1867] 3 Ch. App. 36; Gunn's case [1867] 3 Ch. App. 40.
4. Ellet v. Sternberg [1911] 27 T. L. R. 127.
5. Duff's Executors' case [1886] 32 Ch. D. 301; cf. Hall's case [1870] 5 Ch. App. 707.
6. Sorabji v. Iswardas [1886] 20 Bom. 654.
7. Mumtaz Bank v. Syed Masud Ali [1937] L. 812.
8. Ritso's case [1877] 4 Ch. D. 774; London & Northern Bank [1900] 1 Ch. 220.
9. Household Fire Insurance Co. v. Grant [1879] 4 Ex. D. 216 C A.; Henthorn v. Fraser [1892] 2 Ch. 27 at p. 33; Bruner v. Moore [1904] 1 Ch. 305 at p. 316.
10. Pentelow's case [1869] 4 Ch. App. 178; A. Sirkar v. Parjoar Hosiery Mills [1933] R. 388, 150 I. C. 696.
11. Ritso's case (supra).
12. Henthorn v. Fraser (supra).
13. Indian States Bank v. Sardar Singh [1934] A. 855, 154 I. C. 33.
14. Baillie's case [1898] 1 Ch. 110.
15. Spitzel v. Chinese Corpn. [1899] 80 L. T. 347.
16. Roger's case [1868] 3 Ch. App. 633; Wood's case[1873] 15 Ex. 236; Powell v. S. Sen [1918] 40 All. 45, 15 A. L. J. 893.
17. Ramanbhai v. Ghasiram [1918] 42 Bom. 595 at p. 600.

allotment is void on the ground of non-fulfilment of condition, when by his conduct, that is, by accepting the position as shareholder, by accepting dividend, by filing suit for it and by pledging the shares, he has waived the condition 1.

Where a person takes some shares on condition that he would be appointed chairman of the local board of directors, and he is allotted shares and appointed chairman, but subsequently there is a breach of the condition by his dismissal, his remedy is by an action for damages and not for getting his name removed from the register of members 2.

Contract through agent.

Where an application is made before, but allotment notice is sent after, incorporation of the company, they constitute a complete contract 3. An agent to apply for shares will not necessarily be deemed to have authority to receive notice of allotment 4. In ordinary circumstances the application for shares is a mere proposal which may be withdrawn before acceptance is communicated, communication to the agent through whom the application was made being sufficient 5. But where the authority given by the applicant to a person to apply for shares is a continuing and irrevocable authority coupled with an interest, the former is not entitled to withdraw 6. In the case of underwriting or sub-underwriting the filling up of an application form is neither necessary nor appropriate 5.

Withdrawal of proposal.

S. 6 of the Indian Contract Act IX of 1872 says: "A proposal is revoked—(1) by the communication of notice of revocation by the proposer to the other party; (2) by the lapse of time prescribed in such proposal for its acceptance, or, if no time is prescribed, by the lapse of a reasonable time, without communication of the acceptance." If the proposer revokes his offer before acceptance, sub-s. (1) mentioned above applies. Even if he does not revoke, sub-s. (2) applies after the lapse of a reasonable time unless of course the proposer's conduct amounts to a waiver of the revocation 7. Care should be taken that nothing is introduced in the letter of allotment differing from the terms of the prospectus or the application form, for in such a case the applicant may withdraw as there is no completed contract 8. If a new term is introduced the allotment letter is no longer an acceptance, but it is a new offer which must be accepted before there is a contract 9. Thus where a man applied for shares and got an allotment letter marked "not transferable", it was held that there was no contract and the applicant was allowed to repudiate the shares 10.

Contract where binding and where not.

To allot less than the number of shares applied for does not constitute a binding contract, unless words in the application authorize a partial allotment 11. Where the directors allotted shares on terms which were illegal, *e. g.*, that they should be paid for by fees earned, it was held that there was no contract and the allottee was not a shareholder 12.

An allotment made on an application signed in a false name constitutes a good contract, if the applicant intended to get the benefit of the shares. In such a case he

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1. Hargopal v. Peoples Bank of N. India [1935] L. 691; see also Piara Singh v. Peshwar Bank [1915] 28 I. C. 53; Peoples Bank of N. India [1936] L. 700.
2. Peoples Bank of N. India (supra). 3. Downes v. Ship [1868] 3 H. L. 343.
4. Robinson's case [1869] 4 Ch. App. 322.
5. Per Warrington L.J. in Pole's case [1920] 2 Ch. 341.
6. Ibid (Carmichael's case [1896] 2 Ch. 643 applied).
7. Ramlal Sao v. Malak [1939] N. 225, [1939] N. L. J. 305.
8. Jackson v. Turquand [1869] 4 H. L. 305.
9. Per Cotton L. J. in Hussey v. Horne-Payne [1878] 8 Ch. D. 670.
10. Duke v. Andrews [1843] 2 Ex. 290.
11. Ex. Parte Roberts [1852] 1 Drew. 204.
12. National House Property Co. v. Watson [1908] S. C. 888.

will be put in a winding up on the list of contributories in his true name[1]. But it will be otherwise if the application was not intended to be acted upon, as in the case in which the application was sent inorder to increase the supposed number of shares applied for[2].

Repudiation.

The allotment must be made within a reasonable time of the application, otherwise the applicant may repudiate the shares[3]. The Court has jurisdiction to specifically enforce a contract by a person to take and by a company to allot shares[4].

Who is to make allotment.

Unless the articles otherwise provide, the duty of making allotment primarily falls upon the directors and it cannot be delegated to a purely ministerial officer[5]. But where the articles do not specifically make such provision and state on the other hand that the general management of the company shall be by the secretaries and treasurers subject to the supervision of the directors, it was held that allotment by the secretaries and treasurers was valid[6]. Where the power of allotment is vested by the deed of settlement in the board of directors the quorum of which is three, they have no right to delegate such powers, *e.g.*, to two directors[7].

Directors' duty in making allotment.

In making allotment the directors should bear in mind that they are trustees of the company and must allot the shares for its benefit. It is a breach of duty for directors to issue shares to themselves and their friends in more favourable terms than those offered to the public, unless the latter are expressly informed of the arrangement[8]. Although the directors are not bound to issue shares at a premium when they are above par in the market[9], they should not allot them at par to members of their own body or their friends, for they should always seek to obtain the benefit of the premium for the company[10]. If they make such allotment at par they must account to the company for the profits[10]. Directors should not also allot shares to themselves for the purpose of obtaining control of the voting power in the company. If they do so the Court will declare the allotment invalid and rectify the register and in the meantime will restrain the allottees from voting in respect of the shares thus allotted[11]. The directors may however purchase shares for the purpose of increasing their voting power[12]. An allotment by directors is valid even though they themselves have not paid the allotment money on the shares held by them, and such objection is not open after liquidation[13].

Remedy in case of irregular allotment.

Allotment of shares by an irregularly constituted board is *prima facie* invalid ; but if the articles validate an act done by a *de facto* director in a *bona fide* manner, the Court will uphold the act[14]. A person to whom shares have been irregularly allotted has the right to have his name taken off the register of members, but he cannot do so after he has accepted his share certificate[1]. The right to rescind an allotment on the ground of fraud and misrepresentation must be exercised at the earliest moment when the allottee becomes aware of them (see the last case). For other cases on this point see notes to s. 38.

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[1] Savingny's case [1899] W. N. 1, 5 Mans. 336.
[2] Coventry's case [1891] 1 Ch. 202.
[3] Ritso's case [1877] 8 Ch. D. 774.
[4] Odessa Tramways Co. v. Mendel [1878] 8 Ch. D. 235.
[5] Pusarala v. Guntur C. J. & P. Mills [1914] 26 I. C. 349, 16 M. L. T. 538.
[6] Ex. p. Roberts (supra). [7] Howard's case [1866] 1 Ch. App. 561.
[8] Alexander v. Automatic Telephone Co. [1900] 2 Ch. 56.
[9] Per Lord Davey in Hilder v. Dexter [1902] A. C. 474 at p. 480.
[10] Shaw v. Holland [1900] 2 Ch. 305.
[11] Punt v. Symons & Co. [1903] 2 Ch. 506 ; Pierey v. S. Mills & Co. [1920] 1 Ch. 77.
[12] North-West Transportation Co. v. Beatty [1887] 12 App. Cas. 589.
[13] All India Cattle Insurance Co. [1935] L. 464, 155 I. C. 536.
[14] Changa Mul v. Provincial Bank [1914] 36 All. 412, 12 A. L. J. 667 ; British
Asbestos Co. v. Boyd [1903] 2 Ch. 439 ; British Empire Match Co. [1884] 49
L. T. 291. See also s. 86 *ante*.

Allotment in contravention of the section.

The Court has no jurisdiction to restrain directors by injunction from going to allotment in contravention of this section, the proper remedy being a suit against the directors for breach of their statutory duty[2]. If the directors proceed to make allotment in contravention of this section, the liability under the next section is substituted[3]. But a director who was not present at the meeting at which the board determined to go to allotment is not liable[4].

Amount payable on application.

Sub-s. (3) This sub-section lays down a mandatory requirement. The applicant for shares is under a statutory obligation to pay 5 per cent. of the nominal amount of the shares applied for along with his application, and the company is also under the obligation to see that he does so, and it is against public policy that any allotment should be made without compliance with this requirement. Hence an application for share, if not accompanied by any such payment, does not legally constitute a valid offer so as to entitle the company to demand the share money from the applicant[5]. This sub-section is applicable to all allotments whether at the time of floating the company or any subsequent period. Any allotment which is made without payment of at least 5 per cent. of the nominal value of the shares by the applicant is therefore invalid[6]. But although sub-s. (6) provides that sub-s. (3) is applicable to subsequent allotments also, Mr. Justice Panckridge of the Calcutta High Court has held in a later case that there is nothing in this section which forbids the directors to allot shares to applicants who neglect to pay the application money in terms of the prospectus, once the first allotment has been regularly made, although it may be that a provision in the prospectus empowering them to do this would be an infringement of the Act[7]. His Lordship says that this is a somewhat unsatisfactory conclusion. But it is submitted respectfully that this is due to the unsatisfactory drafting of the amendment. Sub-s. (1) which forbids an allotment where five per cent. of the amount of share subscribed has not been paid to or received in cash by the company, does not by reason of sub-s. (6), apply to subsequent allotments. Still by the retention of sub-s. (3) this difficulty has been created. This sub-section only says that the amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share, but there is nothing in the section to show that a subsequent allotment without the payment of application money is void or voidable. The amount payable on application must be paid in cash or by cheque, but cheques that are subsequently dishonoured do not constitute payment, even though immediately replaced by other cheques[8], nor do cheques received and held over though subsequently honoured[9]. Allotment made before the money is "paid to and received by" the company is voidable and the money is not received until the cheques are cashed[8 & 9].

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[1] Pusarala v. Guntur C. J. & P. Mills [1914] 26 I. C. 349, 16 M. L. T. 538.
[2] Finance and Issue Ltd. v. Canadian Produce Corpn. [1905] 1 Ch. 37.
[3] Burton v. Bevan [1908] 2 Ch. 240 ; Hilder v. Dexter [1902] A. C. 474 at p. 480.
[4] Burton v. Bevan (supra).
[5] Ramlal Sao v. Malak [1939] N. 225, [1939] N. L. J. 305. See also Mutual Bank v. Sohan Singh (infra) and Indian States Bank v. Sardar Singh [1934] A. 855.
[6] Mutual Bank of India v. Sohan Singh [1936] L. 790, 161 I.C. 952.
[7] Happy India Insurance Co. [1940] C. 164, [1939] 2 Cal. 512, 187 I. C. 880, dissenting from Mutual Bank of India v. Sohan Singh, supra.
[8] Mears v. Western Canada &c. Co. [1905] 2 Ch. 353.
[9] National Motor Mail Coach Co. [1908] 2 Ch. 228.

Consideration.

An agreement by a company to pay a sum of money at once for future services and to satisfy the amount by an issue of fully paid shares may be good consideration for the allotment 1. But a company cannot allot two hundred £ 1 shares for 10 s. each in consideration of the allottee making a loan of £ 100 to the company 2.

Allotment to vendor's nominee.

If an agreement is made that shares shall be allotted to a vendor "or his nominee," an allotment to the vendor without giving him an opportunity of making a nomination is bad 3.

Allotment of new shares.

When upon an issue of new shares offer is made to the existing shareholders, the acceptance by the latter completes the contract and no allotment is necessary. Sometimes the offer is coupled with a right to renounce the shares in favour of a third party. In such a case the directors cannot refuse to accept the person in whose favour the renunciation is made, relying upon a clause in the articles entitling them to reject transfers 4.

Allotment to minor.

If allotment is made to a minor he can at any time before or on attaining majority, repudiate the transaction ; but he cannot merely on the ground of infancy demand repayment of the amount paid 5.

Stamp.

A notice of allotment, though not stamped, is admissible in evidence to establish the fact that notice of the allotment has been given 6. For stamp see Appendix—"Stamp Duty."

A suit for allotment money is cognizble by a Court of Small Causes 7.

See notes to s. 30.

Effect of irregular allotment.

102. (1) An allotment made by a company to an applicant in contravention of the provisions of [*section 98 or section 101*] shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later *or in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting within one month after the date of the allotment and not later*, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of [*section 98 or section 101*] with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby : Provided that proceedings to recover any such loss, damages or

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1. Gardner v. Iredale [1912] 1 Ch. 700.
2. James Pitkin & Co. [1916] W. N. 112, 114 L. T. 673.
3. National Standard Life Assurance Corpn. [1911] 27 T. L.R. 271.
4. Poole Shipping Co. [1920] 1 Ch. 251.
5. Steinberg v. Scala (Leeds) Ltd. [1923] 2 Ch. 452, overruling Hamilton v. Vaughan Sherrin &c. Co. [1894] 3 Ch. 589.
6. Mohun Lal v. S. G. Cotton Mills [1900] 4 C. W. N. 369.
7. Peoples' Bank v. Chanan Ram [1933] L. 657, 143 I. C. 723.

costs shall not be commenced after the expiration of two years from the date of the allotment.

Amendments.

By the Companies (Amendment) Act, 1936, in sub-s (1) the words in italics have been inserted as a private company is not required to hold a statutory meeting [*vide* the new s. 77 (11)] and there may be allotments after the statutory meeting of a public company. In sub-ss. (1) and (2) the words and figures within square brackets have been substituted for the word and figure "section 101" by the amending Act II of 1938.

Remedy for irregular allotment and when it is lost.

As to the remedy of an allottee for irregular allotment, see notes to the previous section. Where an allottee after discovering that the allotment has been made in contravention of s. 98 or s. 101 treats the contract as subsisting, as for example by attempting to sell the shares 1, by executing a transfer deed of the shares 2, by paying calls &c. or taking dividends 3, or by attending and voting at a general meeting in person or by proxy 4, he may lose his right to avoid the allotment.

Allotment is voidable only.

Under this section the allotment is only *voidable* at the instance of the applicant. Until he elects to avoid the contract, it remains good 5. The Act recognizes that the observance of the formalities may be dispensed with, and irregular, as distinguished from void, transactions may be confirmed. Consequently a person may become shareholder to most, if not all, intents and purposes, without complying with all the formalities prescribed in that behalf by a statute, charter or constitution of the company, and although there may be irregularities in the issue of shares to him 6. So where the allottee pays allotment money and subsequently acts as a shareholder without objection, he will not be permitted to raise the question of validity of the allotment; for once the shares have been registered in the name of the allottee and he has done acts only consistent with his being a member, he will be taken to have agreed to take the shares, or at any rate he will be estopped from denying that he has so agreed 7.

Where allotment is valid.

Where allotment was made by the managing directors by virtue of a delegated authority from two other directors who had not paid their allotment moneys, there was no valid allotment 8.

Notice avoiding allotment.

It is not necessary that the dissatisfied applicant should take proceedings within the month after the statutory meeting or before liquidation is commenced, if he has given notice avoiding the allotment, within the month and commenced action within a reasonable time 9. But he will be precluded from avoiding the allotment, if he has expressly, or by conduct, affirmed it with knowledge of the irregularity 10. A small amount of acquiescence after knowledge will bar an allottee's right of rescission 10.

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1. Exp. Briggs [1866] 14 L. T. 39.
2. Crawley's case [1869] 20 L. T. 96.
3. Scholey v. Central Ry. Co. of Venezuela [1868] 39 L. J. Ch. 354; Sherman, Exp. [1896] 66 L. J. Ch. 25.
4. Sharpley v. Louth & East Coast Ry. Co. [1876] 2 Ch. D. 663.
5. Oakes v. Turguand [1867] L. R. 2 H. L. 325; Peek v. Gurney [1873] L. R. 6 H. L. 377.
6. Peara Singh v. Peshwar Bank [1915] 28 I. C. 53.
7. Peara Singh v. Peshwar Bank [1915] 28 I. C. 53.
8. Bank of Peshwar v. Madho Ram [1919] 51 I. C. 812.
9. National Motor Mail Coach Co. [1908] 2 Ch. 228.
10. Finance & Issue Ltd. v. Canadian Produce Corpn. [1905] 1 Ch. 37.

Sub-s. (2). If any director knowingly contravenes or permits or authorizes the contravention of any of the provisions of s. 101, he will be liable to compensate the allottee as well as the company 1.

Where director is not liable.

A director who was not present at the meeting making the allotment and did not know the irregularity is not liable, even though he was present and voted at a subsequent meeting confirming the minutes regarding the allotment 2.

Effect of a petition for winding up.

A member cannot be relieved from the shares upon the ground of misrepresentation in the prospectus, on a bill filed after the presentation of a petition for winding up on which an order was subsequently made 3.

As to cost see *Barnett* v. *Eccles. Corpn.* 4.

Limitation.

A special limitation of two years is prescribed by the section for instituting proceedings for damages against directors.

Restrictions on commencement of business.

103. (1) A company shall not commence any business or exercise any borrowing powers unless—

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription ; and

(*b*) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash ; and

(*c*) there has been filed with the registrar a duly verified declaration by the secretary or one of the directors in the prescribed form, that the aforesaid conditions have been complied with ; and

(*d*) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement in lieu of prospectus.

(2) The registrar shall, on the filing of a duly verified declaration, in accordance with the provisions of this section certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled :

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1. Indian States Bank v. Sardar Singh [1934] A. 885, 154 I. C. 33.
2. Burton v. Bevan [1908] 2 Ch. 240.
3. Kent v. Freehold Land Co. [1868] 3 Ch. App. 493.
4. [1900] 2 Q. B. 104.

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the commencemet of this Act which does not issue a prospectus inviting the public to subscribe for its shares or, in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

Interference by Court.

The Court will not interfere to prevent the directors from commencing business on the ground that all the nominal capital has not been subscribed for, nor on the ground that the business actually commenced is on a much smaller scale than that contemplated by the prospectus [1].

Winding up before commencement of business.

If a company is wound up without having become entitled to commence business, persons who have supplied goods or rendered services will have no claim against the company [2]. Even the bank which received the application money cannot recover for its services [3].

Contract made before incorporation.

A contract can be made with a trustee for the company before its incorporation, in which case the trustee will be personally liable, unless he expressly protects himself from liability by including a power to rescind the contract [4]. It is usual in such a case to make it one of the objects in the memorandum of association and also to provide in the articles that the directors shall adopt the preliminary agreement. But this will not bind the company, unless a new contract is entered into by which the company agrees to be bound by the terms of the preliminary agreement [5]. See notes to s. 23, *ante*.

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[1] Mac Dougall v. Jersey Imperial Hotel Co. [1864] 2 H. & M. 528.

[2] "Otto" Electrical Manfg. Co. [1906] 2 Ch. 390.

[3] New Druce Portland Co. v. Blakiston [1908] 24 T. L. R. 583.

[4] Kelner v. Baxter [1866] L. R. 2 C. P. 174.

[5] Re Olympia Ltd. [1898] 2 Ch. 153 at p. 168, following Eley v. Positive &c. Insurance Co. [1875] 1 Ex. D. 20 at p. 88 and Browne v. La Trinidad [1887] 37 Ch.D. 1 at p. 19; Northumberland Avenue Hotel Co. [1886] 33 Ch. D. 16; Natal Land Co. v. Pauline Colliery Syndicate [1904] A. C. 120.

Adoption of agreement.

A resolution of the board of directors adopting the agreement will not however create a contract between the company and the vendor 1. A new contract in some cases may be inferred from the circumstances and the conduct of parties 2. But the mere fact that the directors think that they are bound by the contract with the trustee and act accordingly is not enough, even though large sums of money are expended and work is done in that mistaken belief 3.

Agreement should be executed after incorporation.

Where the contract is purported to be made with the company itself, it is sometimes prepared before its incorporation and then referred to in the memorandum of association and the articles as an "agreement already drawn up and intended to be executed," and for indentification, signed or initialled by some of the subscribers to the memorandum or by a solicitor. In such a case the agreement requires to be executed by the company and this must be done after due consideration by the directors who must exercise their judgment upon it, and if they are not an independent body, the company may repudiate the contract 4.

Borrowing powers.

As regards borrowing powers it should be remembered that every trading company has an implied power to borrow money and to charge its property as security for payment of the loan 5. A company which borrows money to pay off existing debts does not thereby increase its liability 6.

Payment in cash.

Sub-s. (1) (*a*) & (*b*). In order that a transaction between a company and an allottee of shares may amount to "payment in cash," each party must have an actual demand on the other for present payment 7. Any circumstance giving rise to a right of set off or an agreement to render services may be a good payment 8. "In *Fothergill's case*" 9, observed Lord Justice James, "the bargain in effect was to give paid up shares in satisfaction of the money which was to be paid for other shares. But if a transaction resulted in this, that there was on the one side a *bona fide* debt payable in money at once for the purchase of property, and on the other side a *bona fide* liability to pay money at once on shares, so that if bank notes had been handed from one side of the table to the other in payment of calls, they might legitimately have been handed back in payment for the property, it did appear to me in *Fothergill's case* 9 and does appear to me now, that this Act of Parliament did not make it necessary that the formality should be gone through of the money being handed over and taken back again ; but that if the two demands are set off against each other the shares have been paid for in cash" 10.

Certificate conclusive.

Sub-s. (2). The certificate of the registrar is conclusive and the Court will not take any evidence that there have been irregularities 11. Any allotment by a public company which neither issues a prospectus nor files a statement in lieu of prospectus is altogether void ; but if a statement has been filed and

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1. Johannesburgh Hotel Co. [1891] 1 Ch. 119 ; North Sydney Investment Co. v. Higgins [1899] A. C. 263.
2. Natal Land Co. v. Pauline Colliery Syndicate (supra).
3. Northumberland Avenue Hotel Co. (supra) ; Dansk Rekylriffel Syndikat v. Snell [1908] 2 Ch. 127 ; English & Colonial Produce Co. [1906] 2 Ch. 435.
4. Langunas Nitrate Co. v. Lagunas Nitrate Syndicate [1899] 2 Ch. 392.
5. General Auction &c. Co. v. Smith [1891] 3 Ch. 432.
6. Harris Calculating Machine Co. [1914] W. N. 133, [1914] 1 Ch. 920.
7. Johannesburgh Hotel Co. [1891] 1 Ch. 119.
8. Spargo's case [1873] 8 Ch. App. 407 ; Larocque v. Beauchemin [1897] A.C. 358 ; North Sydney Investment Co. v. Higgins [1899] A. C. 263 ; Parshotamdas v. Ishwardas [1892] 16 Bom. 161.
9. [1873] 8 Ch. App. 270.
10. Spargo's case (supra) at p. 412.
11. Yolland, Husson & Birkett Ltd. [1908] 1 Ch. 152.

the registrar's certificate obtained, inaccurate or insufficient particulars do not render the statement a nullity or the allotment absolutely void 1.

Meaning of "provisional."

Sub-s. (3). The word "provisional" means that the contract is to be read as if it contained a provision that it shall not be binding on the company unless and until the company becomes entitled to commence business 2 ; so the company cannot be sued on a contract whether express or implied 2. A company does not by its adoption of a contract of purchase made before its formation by persons purporting to act on its behalf incur any contractual relation with or obligation to the vendor 3. A company cannot ratify a contract made before its incorporation, for it was not in existence at the time 4.

A contract made with the trustee for a company is not binding on the latter 5, unless a new contract is made after its incorporation 6. A resolution of the board adopting the contract will not suffice 7.

Sub-s. (5). The words "every person who is responsible for the contravention" would include directors, managers and other executive officers and possibly the secretary 8.

Sub-s. (6). The last portion of this sub-section, namely, "or in so far as its provisions relate" &c. does not occur in the English Act of 1908.

This section does not apply to a private company.

Return as to allotments.

104. (1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter,—

(*a*) file with the registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees and the amount (if any) paid or due and payable on each share ; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount

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1. Blair Open Hearth Furnace Co. [1914] 1 Ch. 390.
2. Otto Electrical Manfg. Co. (supra).
3. North Sydney Investment Co. v. Higgins (supra).
4. Kelner v. Baxter [1866] 2 C.P. 174 ; Melhado v. Porto Alegre &c. Ry. Co. [1874] 9 C. P. 503 at p. 505.
5. Ooregum G. M. Co. v. Roper [1892] A. C. 125 ; Hong-Kong & China Gas Co. v. Glen [1914] 1 Ch. 527.
6. Northumberland Avenue Hotel Co. [1886] 33 Ch. D. 16.
7. North Sydney Investment Co. v. Higgins [1899] A. C. 263.
8. Cf. Burton v. Bevan [1908] 2 Ch. 240.

of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above-mentioned is not reduced to writing, the company shall, within one month after the allotment, file with the registrar the prescribed particulars of the contract stamped with the same stamp-duty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(3) If default is made in complying with the requirements of this section, every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues :

Provided that in case of default in filing with the registrar within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Court may think proper.

(4) *Nothing in this section shall apply to the issue and allotment by a company of shares which under the provisions of its articles were forfeited for non-payment of calls.*

Amendment.

By the Companies (Amendment) Act, 1936, the new sub-s. (4) has been added. The amendment excludes forfeited shares, subsequently re-issued, from the purview of the section.

Failure to file return of allotment.

Sub-s. 1, (a). The directors and managers are bound to furnish to the registrar the return of allotment as provided in this section, and their failure to do so renders them liable to the penalties provided in sub-s. (3). A plea of ignorance of the law will not be accepted as an excuse ; but where the default is not intentional, the full or a heavy penalty may not be exacted 1.

Contract for fully or partly paid up shares.

Sub-s. 1, (b). Inorder to comply with cl. (b) it is not necessary that within the four corners of the filed contract there should be a complete identification of the property other than cash which is the consideration given for the shares, provided the filed contract states plainly the nature of the consideration, and supplies the means of identification by reference to an unfiled

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1. Emp. v. Nathuram [1919] 20 Cr. L. J. 725, 52 I. C. 885 ; see also James Pitkin & Co. [1916] W. N. 112, 114 L. T. 673.

contract which contains a full description of the consideration 1. Where there is a contract referred to in sub-s. 1 (b), but it is not filed with the registrar, the only consequence of the failure to file it will be the penalty under sub-s. (3), and the allottee is not responsible as a contributory for calls as though the shares were unpaid shares 2. On the other hand if the consideration payable for the shares is illusory, or permits an obvious money-measure to be made showing that discount has been allowed, filing the contract with the registrar will not relieve the allottee from the obligation to pay the nominal value of the shares or the amount of the discount in cash. But the Court is not bound to inquire in each case whether the price was reasonable or whether what was given for the shares had a cash value in the market equal to the nominal value of the shares 3.

Where contract for fully paid up shares is valid.

Although a limited company cannot release a shareholder from the obligation to pay for his shares either in money or money's worth and cannot therefore issue its shares at a discount, it can, provided the contract is duly registered, buy property at any price it thinks fit, and can pay for such property in fully paid up shares 4. The transaction will be valid and binding upon its creditors if the company has acted in it honestly and not colourably and has not been so imposed upon by the vendor as to be relieved from the bargain 4.

Value received by company.

The value received by the company is measured by the price at which the company agreed to buy the property, and whilst the transaction is unimpeached, that is the only value which the Court can take into consideration 4.

Payment in money's worth.

Payment in money's worth is sufficient payment 5, so is the extinguishment of debt due from the company to the shareholder 6, even though no call has been made and no debt is presently due to the company 7. It is not material that the company has not entered the payment in its books 8.

Set off.

Although a company may agree to accept some other form of payment or set off an existing debt 9 against a present liability to pay calls 10, a release without payment in money or money's worth or on payment of less than the full amount is *ultra vires*. But any circumstance creating a set off or an agreement to render service may be a good payment 11.

Ultra vires.

"It is beyond the power of a limited company to release a shareholder from his obligation without payment in money or money's worth. It cannot give fully paid up shares for nothing and preclude itself from requiring payment in money or money's worth" 12. An agreement to accept the supply of goods at a future time against calls is not valid 13. An agreement by the company to pay a sum of money

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1. African Gold Concession &c. Co. [1899] 1 Ch. 414.
2. Prem Behari v. S. B. Billimoria & Co. [1926] 24 A. L. J. 576, 48 All. 503, 95 I. C. 570, [1926] A. 524; but see Motilal v. Thakore Lal [1912] 36 Bom. 557; Hartley's case [1875] 10 Ch. App. 157.
3. In re Theatrical Trust, Chapman's case [1895] 1 Ch. 771.
4. In re Wragg Ltd. [1897] 1 Ch. 796; Pell's case [1869] 5 Ch. App. 11.
5. Drummond's case [1869] 4 Ch. App. 772; Pell's case [1869] 5 Ch. App. 11; Baglan Hall Colliery Co. [1870] 5 Ch. App. 346; re Wragg Ltd. (supra) at pp. 835-38.
6. Fothergill's case [1873] 8 Ch. App. 270; Baglan Hall Colliery Co. (supra).
7. Jones Lloyd & Co. [1889] 41 Ch. D. 159.
8. Re Theatrical Trust, Chapman's case [1895] 1 Ch. 771.
9. Spargo's case [1873] 8 Ch. App. 407.
10. In re Wragg Ltd. (supra); Pell's case (supra).
11. In re Theatrical Trust (supra).
12. Eddystone Marine Insurance Co. [1893] 3 Ch. 9.
13. Pellatt's case [1867] 2 Ch. App. 527; Ex. parte Clark [1869] 7 Eq. 550.

at once for future services, *e.g.*, erection of a building and to satisfy the amount by an issue of fully paid up shares, may however be a good consideration for the issue of those shares 1.

Consideration for issue of fully paid shares.

If the consideration be in kind, the Court will not inquire whether it was really of value equal to the nominal amount of shares issued (unless the consideration is illusory), or permitted of an obvious money value 2, but the written contract may go very far to establish that the consideration is not illusory, even if there is much to point to its being excessive 3. In fact a company can agree to purchase property and pay for services at any price it thinks proper and may make the payment in shares, provided that it does so honestly and not colourably, and has not been so imposed upon as to be entitled to repudiate the bargain 4.

Where under the condition of a debenture deed the debenture-holder is allotted some ordinary shares on surrender of his debenture, the allotment of fully paid up shares in exchange for his debenture is an allotment of shares "as fully paid up otherwise than in cash" within the meaning of sub-s. (I), clause (b) of this section 5.

A company cannot validly contrat for a fixed present consideration that upon every increase of capital a definite proportion of the new shares shall be issued as fully paid to the vendors 6.

The surrender of a right to payment of a sum or bonus payable out of profits only when no profits have been earned is not a good consideration either in cash or in kind for the issue of fully paid shares 7.

The Act does not require that the contract to be registered should identify the shares by numbers 8.

As to the meaning of the word "issue," see the cases noted below 9.

Proviso.

Under the proviso to sub-s. (3) particulars of inadvertence must be set out in the affidavit 10. When a document is sought to be filed with the registrar after expiry of the time, he should file it and inform the officer presenting it that unless within the time to be specified by the registrar the company obtains an order from the Court extending the time, he will take steps to prosecute the officer for default. The effect of accepting and filing the documents after time by the registrar does not relieve the defaulter from liabilities without proper relief being granted by the Court 11. The registration of the articles is not the registration of a contract within the meaning of this section. It must be a contract which shows what shares are to be issued as fully paid up and for what consideration 12.

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1. Gardner v. Iredale [1912] 1 Ch. 700.
2. Theatrical Trust (supra) ; Almada & Tirito Co. [1888] 38 Ch. D. 415 ; re Wragg Ltd. [1897] 1 Ch. 796 ; Ooregum Gold Mining Co. v. Roper [1892] A. C. 125.
3. Re Innes & Co. [1903] 2 Ch. 254.
4. Re Wragg Ltd. (supra) ; Ooregum G. M. Co. v. Roper (supra) ; Hongkong & China Gas Co. v. Glen [1914] 1 Ch. 527.
5. Thodapuzha Rubber Co. [1917] 42 I. C. 674, 33 M. L. J. 474.
6. Hongkong & China Gas Co. v. Glen [1914] 1 Ch. 527.
7. Bury v. Famatina Development Corpn. [1910] A. C. 439.
8. Elsner & Mc Arthur's case [1895] 2 Ch. 759 ; Jackson & Co. [1899] 1 Ch. 348.
9. Bush's case [1874] 9 Ch. App. 554 ; A. G. v. Regent's Canal & Dock Co. [1904] 1 K. B. 263, 270.
10. Victoria Brick Works [1898] 5 Manson 350, [1898] W. N. 162.
11. Ramackers & Co. [1930] C. 146, 56 Cal. 976.
12. Crickmer's case [1875] 10 Ch. App. 614.

"Contract in writing."

Ratification of previous contracts with vendors of business by the board of directors cannot be described as a contract in writing constituting the title of the allottee within the meaning of sub-s. (1) (b) 1.

Stamp.

If a liquidator finds that a contract for the allotment of shares has not been stamped and filed, it is his duty to stamp it at the expense of the company and file it when stamped 2. This section does not require that a duty payable on a conveyance should be levied on an agreement for allotment of shares in future 3. If after entering into a contract for sale the parties, inspite of the risk that either party may resile from the contract, refrain from getting an actual deed of conveyance executed, they can successfully evade the payment of a higher duty 3. In the last cited case the vendor company entered into an agreement on the 26th January, 1921 to sell all their business, undertaking and assets including goodwill &c., with effect from the 1st January, 1920. The agreement recited that the purchase shall be completed on such date as shall be mutually arranged. Afterwards a sale deed was executed by the vendors in respect of the immovable property but no deed of transfer was executed as regards the goodwill and movable property. The agreement deed was stamped as agreement with eight annas stamp: *held* that the agreement deed did not amount to a conveyance, but was merely a contract to sell, although the parties intended that when completed it should take effect from 1st January, 1920. So it was properly stamped.

Sub-s. (1) (b) of this section requires the particulars of a contract "constituting the title of the allottee" to be filed with the registrar. If this contract consists merely of an agreement to transfer properties in the future, the particulars thereof cannot be treated as a transfer of the properties *in presentioe*. Sub-s. (2) clearly lays down that the particulars would be liable to the same stamp duty as would have been payable if the contract of which the particulars are supplied had been reduced to writing 4. In the last cited case the contract was oral; but it does not make any difference if the contract is in writing 5.

Commissions and Discounts.

Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.

105. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles and the commission paid or agreed to be paid does not exceed the amount or rate so authorised and if the amount or rate per cent. of the commission paid or agreed to be paid is—

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1. Ramsawamy v. Chengalroya [1926] M. 380, 27 Cr. L. J. 700.
2. In re X. Company [1907] 2 Ch. 92.
3. Incorporation of the Swadeshi Cotton Mills Co. [1932] A. 291, [1932] A. L. J. 394, 131 I. C. 337, Sp. Bench [Comrs. of Inland Revenue v. Angus & Co. (1889) 23 Q. B. D. 579 (593) relied on].
4. Bholaram & Sons v. Emp. [1934] L. 530, Sp. Bench, 15 Lah. 501, 150 I.C. 781.
5. Lakshmi Iron & Steel Manfg. Co. v. Emp. [1934] L. 533, Sp. Bench, 15 Lah. 509, 150 I.C. 790.

(*a*) in the case of shares offered to the public for subscription, disclosed in the prospectus ; or

(*b*) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar and, where a circular or notice, not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid *and save as provided in section 105A*, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase-money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

The words in italics in sub-s (2) have been inserted by the Companies (Amendment) Act, 1936. For effect of the amendment see Introduction.

Company cannot issue shares at a discount.

Subject to the statutory provision as to paying commission for the underwriting of shares and as to paying the usual brokerage, a company cannot issue shares at a discount [1], even by way of compromise [2], or in any other indirect way [3]. Contract for doing so is void [4], and cannot be enforced [5]. If an arrangement for the issue of the shares is such that in the course of its due working out there is as much as a possibility that in the result the shares will have been issued at a discount, then the issue of the shares as fully paid cannot be justified 1. In a winding up proceeding the holder of shares issued at a discount must make good the deficiency 2. An agreement to issue bonus shares as fully paid up to subscribers to debentures is *ultra vires* the company and is void 3. Upon liquidation the holders of such shares will be liable to pay up the full amount in cash 3.

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[1] Ooregum G.M. Co. v. Roper [1892] A.C. 125.

[2] Mother Lode Gold Mines v. Hill [1903] 19 T.L.R. 341.

[3] Moseley v. Koffyfontein Mines [1904] Ch. 108 ; Famatina D. Corpn. v. Bury [1910] A.C. 439.

[4] Welton v. Saffery [1897] A.C. 299 ; James Pitkin & Co. [1916] W. N. 112, 114 L. T. 673 (ignorance of legal effect of an allotment is no excuse).

[5] Almada & Tirito Co. [1888] 38 Ch. D. 415 C. A.

A company has no power to issue shares at a discount so as to render the shareholder liable for a smaller sum than that fixed for the value of the shares by the memorandum of association, and such issue shall be invalid, although the contract with the shareholder has been registered 4.

Set off may be valid.

An agreement by a shareholder with the company to set off against future calls a present liability of the company to pay cash may however be valid, if registered 5. An agreement by a company to grant its contractor shares on payment of the allotment, the balance to be recovered in cash or from value of goods supplied, does not contravene this section 6.

Allottee's liability.

It being *ultra vires* for a limited company to issue shares at a discount or by way of bonus, although authorized to do so by the articles, the holders of such shares are not thereby relieved from liability in a winding up to calls for the amounts unpaid on their shares 7.

"It is beyond the powers of a limited company", observed Lord Macnaghten, "to limit the liability of shareholders in a manner inconsistent with the conditions of the memorandum of association. The directors therefore had no authority from the company to issue shares at a discount or on any terms relieving the shareholder from liability to pay in full. The shareholders had no power to authorize the directors to do on behalf of the company that which the company itself could not authorize them to do. The articles of association no doubt empower the directors to issue shares on such terms as they think fit consistently with the provisions of the Companies Acts. The articles in express terms purport to authorize the directors to issue shares at a discount. That provision, however, is in contravention of the statute, and simply void ; neither the company, nor the shareholders, even if they had been unanimous, could have empowered the directors to do anything of the kind" 7.

To pay commission to a person for taking shares is akin to issuing shares at a discount ; but they are not the same things, for if the company goes into liquidation before the commission is paid, the whole amount of the shares can be called up, but the shareholder will be an unsecured creditor for the commission and may not get in full 8.

Rate of commission and payment of a lump sum.

If the articles of association allow commission at a specified rate, a commission consisting of a lump sum cannot be paid 9. The payment of a small commission however, *e.g.* 2½ per cent., to the brokers for their services as such is not *ultra vires* 10. The Court will look at the substance of the transaction and will prohibit a pretended purchase and re-sale which is in fact only a device to cover payment of a commission 9. The commission may how-

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1. Trustees Corpn. (India) Ltd. v. Commrs. of Income Tax [1930] P.C. 151, 57 I.A. 152, 54 Bom. 437, 34 C.W.N. 709 ; Moseley v. Koffyfontein Mines (supra).
2. Weymouth &c. Packet Co. [1891] 1 Ch. 66 C.A. ; Welton v. Saffery (supra).
3. Time Table Publishing Co. [1893] 68 L.T. 649.
4. Almada & Tirito Co. [1888] 38 Ch. D. 415 C. A.
5. Jones Lloyd & Co. [1889] 41 Ch. D. 159.
6. Hansraj v. Asthana [1932] P. C. 240.
7. Welton v. Safferey (supra) at p. 321.
8. Keatinge v. Paringa Consolidated Mines [1902] W. N. 15, 18 T. L. R. 266.
9. Booth v. New A. G. Mining Co. [1903] 1 Ch. 295.
10. Metropolitan C.C. Association v. Scrimgeour [1895] 2 Q.B. 604.

ever be of any amount [1]. The payment of commission must be authorized by the articles; authority in the memorandum is not sufficient [2].

Disclosure of commission.

A private company which had powers under its articles to pay commission to any person procuring subscription for its shares, offered to the plaintiff a specified commission in consideration of her being the means of providing any sum that they might accept from her introduction. The amount or rate of this commission was not disclosed in any statement prescribed by the Act. A person introduced by the plaintiff advanced money to the company who allotted shares in respect of it and paid to the plaintiff a sum on account and in part payment of the commission. The plaintiff sued for the balance of her commission and the company counter-claimed for the payment made. It was held: (1) that the commission was not brokerage within the meaning of the section; (2) that it was unlawful as not disclosed under the provisions of the statute, so the plaintiff could not recover the balance claimed, and (3) that the company could not recover the sum already paid [3]. Where a person applies for obtaining certain shares in the expectation of obtaining some commission or special gain and an arrangement is made in accordance therewith by the promoters, and the application is granted, the applicant, on allotment, becomes a shareholder *in presentiæ*, absolutely, the breach or the unenforceability of the latter arrangement under this section being a collateral agreement does not in any way interfere with the liability of the person as contributory on liquidation of the company [4].

Meaning of "underwriting."

In England prior to the Act of 1900 a company had no power to pay a commission to a person upon the issue of its share [5] capital, and the position of an underwriter was in no way different [5]. The word underwriting means agreeing to take so many shares as are specified in the underwriting letter, if the public or other persons do not subscribe for them [6]. The consideration is the payment of a commission whether the underwriter is called upon to take up any shares or not. It has been held by the House of Lords that an agreement giving the underwriter an option to subscribe for further shares as consideration for underwriting is not an application of shares in payment of commission within the section, and is lawful [7]. Where the shares are at a premium an allotment for less than premium, but not below par, is not an allotment at a discount [7].

The underwriting letter usually authorizes the person to whom it is addressed to apply in the name of the underwriter should he fail to do so when called upon [8]. Such an authority is said to be an "authority coupled with an interest" and therefore after acceptance by the promoter, it is irrevocable [9]; but in such a case, before so applying, the recipient must carefully perform all conditions. He must have accepted the underwriting letter and communicated his acceptance to the underwriter to make the bargain a binding one 1. If the words "when called upon" are used, the underwriter must have been first called upon to subscribe 2. In many cases the underwriting agreement itself establishes a contract to take shares at once 3.

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[1] Keatinge v. Paringa Consolidated Mines [1902] W. N. 15, 18 T. L. R. 266.

[2] Republic of Bolivia Exploration Syndicate [1914] 1 Ch. 139.

[3] Andrae v. Zinc Mines of Great Britain [1918] 2 K. B. 454.

[4] Dehra Dun Mussooree Electric Tramways Co. [1930] A. L. J. 139, 52 All. 406, [1930] A. 357.

[5] See Australian Investment Trust v. Strand & P. S. Properties [1932] P. C. 212, [1932] A. C. 735.

[6] London P. F. M. Corporation [1897] 13 T. L. R. 569; Australian Investment Trust v. Strand & P. S. Properties (supra).

[7] Hilder v. Dexter [1902] A. C. 474 [overruling Burrows v. Matabele &c. Co. (1901) 2 Ch. 23].

[8] Exp. Audain [1889] 42 Ch. D. I.

[9] Carmichael's case [1896] 2 Ch. 643; Olympic &c. Reinsurance Co. [1920] 1 Ch. 582, on appeal 2 Ch. 341.

Where the underwriting letter contains a provision that it is to hold good notwithstanding any variation in the prospectus, the underwriter will not be bound if the changes are such as practically constitute a different venture 4.

The retention of the underwriting letter by the promoter with the consent of the underwriter raises an inference that the bargain is complete 5. If the underwriting letter states that "this engagement is binding for two months," the Court of Appeal has held that it means "this offer shall remain open for two months" and an acceptance even after the subscription lists were closed is binding 6.

Repudiation by underwriter.

An underwriter who takes up shares on the faith of a prospectus containing untrue statements has the same right to repudiate the shares as any other subscriber 7. But in the case noted below 8 the Court of Appeal in England decided an "important and interesting point" as observed by Lord Hanworth M. R. at p. 28 of the report. The plaintiff's case was that he took shares in the company through certain sub-underwriters relying on some representations in the draft prospectus which was adopted by the company after incorporation. As these representations subsequently became falsified, he claimed rescission of the contract, removal of his name from the register of members and return of the money paid to the company. The plaintiff was the undisclosed principal of the sub-underwriters who gave him a letter of renunciation on the strength of which the plaintiff upon payment of the allotment money got his name registered in respect of those shares.

Their Lordships discussed the rights of an undisclosed principal and held that generally speaking he is entitled to enforce the contract made by the agent on his behalf, but this rule does not apply where the agent contracts in such terms as import that he is the real and only principal. "A contract to become a member of a company is, in my opinion, one of that class of contracts in which an undisclosed principal cannot insist on taking the place of a party apparently contracting on his own account" [per Lawrence L. J. at p. 36]. "In such a case it is not right to treat the agent as necessarily interchangeable with his principal so as to enable the principal to come forward and seek to disaffirm the contract on the ground of a misrepresentation on which he alone had relied."

As to the letter of renunciation it was held that the acceptance at a later date of the plaintiff could not be said to be an acceptance by the company of the plaintiff on the basis of the prospectus. The letter of renunciation printed on the allotment letter was in the following form :

"When the balance (if any) due on the allotment has been paid by you this letter of allotment can be renounced until January, 1928 in favour of any other person provided the form of renunciation below is duly completed and signed, and that the person in whose favour the renunciation is made signs the form of acceptance, also below... Renounced allotment letters must be forwarded to the transfer office of the company

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1. Consort &c. Mines [1897] 1 Ch. 575.
2. Ormerod's case [1894] 2 Ch. 474 ; Ex. p. Cox Hughes [1896] 75 L. T. 669.
3. Exp. Audain [1889] 42 Ch. D. I.
4. Warner International Co. v. Kilburn, Brown & Co. [1914] W. N. 61, 30 T. L. R. 284.
5. Ormerod's case [1894] 2 Ch. 474 ; Ex. p. Cox Hughes [1896] 75 L. T. 669.
6. Hindley's case [1896] 2 Ch. 121.
7. Karberg's case [1892] 3 Ch. 1 C. A.
8. Collins v. Associated G. Race Course, Ltd. [1930] 1 Ch. 1.

as shown on the reverse side of this letter, on or before January 21, 1928. Thereafter it will only be possible to transfer such shares by deed in the ordinary way." Then comes the form for renunciation. "To the Directors of the Associated Greyhound Racecourse, Ltd. Gentleman I/We hereby renounce my/our right to the within-named shares, and nominate.........to have all the benefits thereof...Signature of Holder." Then there is a form of acceptance to be signed by the nominee : "I/We hereby accept the nomination to the rights to the within-named shares, and I/we authorise you to place my/our name (s) on the register of members in respect of the said shares"[1].

Deceased underwriter.

The contract of underwriting is enforceable against the executors of the deceased underwriter[2], and even if there are duties of finding capital, this is not such a personal contract as to expire with the contractor[3].

Caution.

The company should see that all the underwriters have paid their application money and that their cheques have been cashed, otherwise in the event of the issue being a failure a few underwriters by combining not to pay the application money or stopping their cheques may prevent the company from going to allotment as was done in *Mears v. Western Canada Pulp & Paper Co.*[4]. It should be remembered that it is a condition precedent to a valid allotment that the whole of the application money should have been paid to and received by the company in cash. Any means by which money can be remitted may be used ; but the remittances or cheques must be cleared and the actual cash received by the company before allotment[4].

Where the underwriting commission was authorized by the articles not to exceed 25 per cent., an agreement for underwriting shares upon a reconstruction of the company for a commission of 10 per cent. was held to be perfectly legal[5].

"Shares offered to the public."

The words "shares offered to the public" in sub-s. 1, cl. (*a*) does not mean shares offered by a promoter to a few of his friends, relations or customers[6]. For the meaning of "placing" shares as distinguished from subscribing for shares see *Gorrissen's case* [1873] 1 Ch. App. 507, 515. For other cases see notes to s. 2 (14) and s. 92.

"Statement in the prescribed form."

The expression "statement in the prescribed from" in sub-s. (1), cl. (b) seems to allow a second statement in lieu of prospectus to be filed where the original statement did not disclose the intention to pay commission. The statement required to be filed under this sub-section with the registrar disclosing the amount or rate of commission to be paid by the company in the case of shares not offered to the public must be filed before the shares are allotted[7].

Sub-s. (2). In respect of the words "apply any of the shares or capital money" in sub-s. (2) Lord Davey has said that they naturally mean "apply its capital, either in the form of shares before issue when they may be described as potential capital, or in the form of money derived from the issue of shares"[8], and following this dictum Warrington J. has decided that commission cannot be paid out of premium payable to the company on the issue of the shares[9]. Unless it is possible to make the issue of the shares the exclusive consideration for rendering the service contemplated under sub-s. (2) apart from the issue of capital, the transaction will be in direct contravention of the said sub-section 1.

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[1] Collins v. Associated G. Race Course, Ltd. [1930] 1 Ch. I.
[2] Warner Engineering Co. v. Brennan [1913] 30 T. L. R. 191.
[3] Re Worthington, *exp.* Pathe Frerer [1914] 2 K. B. 299.
[4] [1905] 2 Ch. 353. [5] Barrow v. Paringa Mines [1909] 2 Ch. 658.
[6] Booth v. New Afrikander G. M. Co. [1903] 1 Ch. 295.
[7] Andrae v. Zinc Mines of Great Britain (supra).
[8] Hilder v. Dexter [1902] A. C. 474 at p. 480.
[9] Shorto v. Colwill [1909] W. N. 218, 101 L. T. 598.

Limits of brokerage.

Sub-s. (3). The limits within which brokerage may be paid seem to be this, as pointed out by Lord Justice Lopez : "Where it is made out that the services of the broker are reasonably necessary, that the brokers are properly employed in the issue of the capital of the company and that the payment of the commission of so much per cent. is a fair and just payment for services rendered" 2, a brokerage may be paid. It would not be safe to pay more than 5 per cent.

Shares may be issued at a premium 3 and such premium may be regarded as profit available for paying dividend 4.

This section applies to private as well as public companies 1 and commissions illegally paid can be recovered 5.

Power to issue shares at a discount.

105A. (1) *Subject to the provisions of this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued :*

Provided that—

(*a*) *the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company and must be sanctioned by the Court ;*

(*b*) *the resolution must specify the maximum rate of discount (not exceeding ten per cent. in any case) at which shares are to be issued ;*

(c) *not less than one year must at the date of issue have elapsed since the date on which the company was entitled to commence business ;*

(*d*) *the shares to be issued at a discount must be issued within six months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.*

(2) *Every prospectus relating to the issue of the shares and every balance-sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.*

(3) *If default is made in complying with sub-section (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty rupees.*

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1. Banking Service Corpn. v. Toronto Finance Corpn. [1928] A. C. 333 P. C.
2. Metropolitan C.C. Assn. v. Scrimgeour [1895] 2 Q.B. 604 at p. 609.
3. Greater Britain Re-insurance Corpn. [1921] 124 L. T. 194 ; see also York & N. M. Ry. Co. [1845] 16 Beav. 485.
4. Hoare & Co. [1904] 2 Ch. 208.
5. Dominion of Canada &c. Syndicate v. Brigstocke [1911] 2 K. B. 648.

Issue of redeemable preference shares.

105B. (1) *Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be, liable to be redeemed :*

Provided that—

(*a*) *no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or out of sale proceeds of any property of the company ;*

(b) *no such shares shall be redeemed unless they are fully paid ;*

(c) *where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the amount applied in redeeming the shares, and the provisions of this* Act *relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company ;*

(d) *where any such share are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption must have been provided for out of the profits of the company before the shares are redeemed.*

(2) *There shall be included in every balance-sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be, liable to be redeemed or, where no definite date is fixed for redemption, the period of notice to be given for redemption.*

If a company fails to comply with the provisions of this sub-section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand rupees.

(3) *Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.*

(4) *Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purpose of calculating*

the fees payable under section 249 be deemed to be increased by the issue of shares in pursuance of this sub-section.

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of the last foregoing sub-section, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Further issue of capital.

105C. *Where the directors decide to increase the capital of the company by the issue of further shares such shares shall be offered to the members in proportion to the existing shares held by each member (irrespective of class) and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.*

Amendments.

By the Companies (Amendment) Act, 1936, the new sections 105A, 105B and 105C have been inserted. Sections 105A and 105B are almost a verbatim reproduction of ss. 47 and 46 respectively of the English Act of 1929. S. 105C is new. For the effects of these new sections see Introduction.

Statement in balance-sheet as to commissions and discounts.

106. Where a company has paid any sums by way of commission in respect of any shares or debentures or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed or so much thereof as has not been written off, shall be stated in every balance-sheet of the company until the whole amount thereof has been written off.

Issue of debentures.

Debentures may be lawfully issued at a discount, but a scheme under which debentures so issued give to the holders an immediate right to exchange them at their nominal value for shares is invalid as it is capable of being used as a means of issuing shares at a discount [1].

Payment of Interest out of Capital.

107. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provisions of plant :

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[1] Moseley v. Koffyfontein Mines [1904] 2 Ch. 108.

Power of company to pay interest out of capital in certain cases.

Provided that—

(1) no such payment shall be made unless the same is authorised by the articles or by special resolution ;

(2) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the [*Central Government*], which sanction shall be conclusive evidence for the purposes of this section that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section ;

(3) before sanctioning any such payment, the [*Central Government*] may, at the expense of the company, appoint a person to inquire and report to the [*Central Government*] as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry ;

(4) the payment shall be made only for such period as may be determined by the [*Central Government*] ; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided ;

(5) the rate of interest shall in no case exceed four per cent. per annum or such lower rate as the [*Central Government*], may, by notification in the [*Official Gazette*], prescribe ;

(6) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is said ;

(7) the accounts of the company shall show the share capital on which, and the rate at which, interest

has been paid out of capital during the period to which the accounts relate ;

(8) nothing in this section shall affect any company to which the Indian Railway Companies Act, 1895, or the Indian Tramways Act, 1902, applies.

Amendments. Throughout this section the words "Central Government" have been substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on the 1st April, 1937. But with the exception of sub-s. (5) [proviso (5) ?] the functions of the Central Government under the section have, with effect from 1st April, 1938, been entrusted to the Provincial Governments—*Vide* Gazette of India dated 26th March, 1938, Part I, p. 440. In proviso (3) of this section the words within the second square brackets have been substituted for the words "such Central Government" by the Repealing and Amending Act XXXIV of 1939. In proviso 5 the words "Central Government" have been substituted for "Governor General in Council" and the words "Official Gazette" have been substituted for "Gazette of India" by the said Government of India (Adaptation of Indian Laws) Order, 1937.

Payment must be made in good faith. Interest on advance before the call is made may be paid out of capital, if so authorized by the articles, provided that the directors make the payment in good faith and in the honest exercise of their discretion. The interest is due to the shareholder in the capacity of a creditor 1.

In the English Act "Board of Trade" takes the place of the "Central Government" in the section. The words "which sanction shall......................in this section" in proviso (2) do not occur in the English Act.

Certificates of Shares, etc.

Limitation of time for issue of certificates. **108.** (1) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Lien not to be entered. The company should not enter on the certificate any statement that it has a lien on the shares 2. A certificate is *prima facie* evidence of title of the person named therein 3.

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1. Lock v. Queensland &c. Co. [1896] A. C. 461.
2. W. Key & Son [1902] 1 Ch. 467.
3. S. 29.

Rights of holder in good faith.

The holder in good faith for value of an untrue certificate has a right to damages against the company but not to the shares as against the true owner 1. If the certificate is a forgery, the company comes under no liability 2 even when the forgery was the act of the secretary 3.

Secretary's authority.

In the absence of any evidence that the company has ever held out the secretary as having authority to do anything more than the mere ministerial act of delivering share certificates, when duly made, to the true owners of the shares, the company is not estopped by the forged certificate from disputing the claim of the plaintiffs or responsible to them for the wrongful action of the secretary 4.

Legal and equitable titles.

The certificate only shows the legal title to the shares and accordingly the person who relies upon the certificate should get his title made complete by taking a transfer to his own name and getting his name registered; otherwise a previous equitable title, e. g., a mortgage may intervene 5.

The statement usually contained in a certificate that no transfer will be registered without production of the certificate does not render the company liable for any loss arising to a person holding the certificate, nor is it a contract that a transfer would not be registered without its production. Such a note is a mere statement of the company's practice and is not a contract 6. But see the new s. 34 (3).

Apart from this section the certificates should be issued within a reasonable time 7. See notes to s. 29 and s. 83.

Information as to Mortgages, Charges, etc.

Certain mortgages and charges to be void if not registered.

109. (1) Every mortgage or charge created after the commencement of this Act by a company and being either—

(*a*) a mortgage or charge for the purpose of securing any issue of debentures; or

(*b*) a mortgage or charge on uncalled share capital of the company; or

(c) a mortgage or charge on any immoveable property wherever situate, or any interest therein; or

(*d*) a mortgage or charge on any book debts of the company; or

(*e*) *a mortgage or a charge, not being a pledge on any movable property of the company except stock-in-trade*; or

(*f*) a floating charge on the undertaking or property of the company;

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1. Hart v. Frontino &c. Co. [1870] L. R. 5 Ex. 111; Bahia & San Francisco Ry. Co. [1868] L. R. 3 Q. B. 584.
2. Ottos Kopje Diamond Mines [1893] 1 Ch. 618; but see Balkis Consolidated Co. v. Tomkinson [1893] A. C. 396.
3. Ruben v. Great Fingall Consolidated [1906] A. C. 439.
4. Ruben v. Great Fingall Consolidated (supra).
5. Moore v. North Western Bank [1891] 2 Ch. 599; Peat v. Clayton [1906] 1 Ch. 659.
6. Guy v. Waterlow [1909] 25 T. L. R. 515.
7. Burdett v. Standard Exploration Co. [1899] 16 T. L. R. 112.

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner are filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable :

Provided that—

(*i*) in the case of a mortgage or charge created out of British India, comprising solely property situate outside British India, twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be filed with the registrar ; and

(*ii*) where the mortgage or charge is created in British India but comprises property outside British India, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate ; and

(*iii*) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts ; and

(*iv*) the holding of debentures entitling the holder to a charge on immoveable property shall not be deemed to be an interest in immoveable property.

(2) *Where any mortgage or charge on any property of a company required to be registered under this section has been so registered,*

any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the said mortgage or charge as from the date of such registration.

[In this section 'British India' does not include Burma or Aden, whatever the date of the mortgage or charge in question].

Amendment. By the Companies (Amendment) Act, 1936, the original s. 109 has been renumbered as sub-s. (1) in which the original cl. (e) has been re-lettered as cl. (f) and the new cl. (e) has been inserted. By the said amending Act the new sub-s. (2) has been added. Under the old provisions of the Act a charge or mortgage created over movable property of the company other than book debts or the uncalled share capital was not required to be registered. The first amendment requires such charges or mortgages to be registered with certain qualifications. The second amendment is designed to affect transferees with notice as from the date of registration. The last paragraph within square brackets has been inserted by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

Scope. The provisions of this section relating to a mortgage or charge created by a company do not apply to a charge arising by operation of law 1.

Meaning of "debenture." A "debenture" means a document which either creates or acknowledges a debt 2. It is usually associated with a corporation of some kind. Debentures are usually bonds issued by a company for Rs. 100, and are offered to the public by means of a prospectus in the same manner as shares. The application for and allotment of debentures are also similar to those in the case of shares 3.

Meaning of "charge." As to what a "charge" is, the following observation of Lord Justice Atkin should be borne in mind : "I think there can be no doubt that where in a transaction for value both parties evince an intention that property existing or future shall be made available as security for the payment of a debt and that the creditors shall have a present right to have it made available, there is a charge even though the present legal right which is contemplated can only be enforced at some future date, and though the creditor gets no legal right of property, either absolute or special, or any legal right to possession, but only gets the right to have the security made available by an order of the Court. ………… If on the other hand the parties do not intend that there should be a present right to have the security made available, but only that there should be a right in the future by agreement such as a license to seize goods, there will be no charge" 4.

Fixed & floating charges. The charge created by a debenture may either be 'fixed' or 'floating'. When the charge is 'fixed' it affects the title to the property and the company can only deal with the property affected subject to the charge. But when the charge is a 'floating' one the company may, in the ordinary course of business, deal with the property covered by the charge, mortgaging, selling, disposing of it or using it up as the business requires, at any time before the charge attaches 5. The terms 'floating security' and 'floating charge' are synonymous 6. Lord Macnaghten lays

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1. Hukum Chand v. Pioneer Mills [1927] O. 55, 99 I. C. 483.
2. Levy v. Abercorris Slate & Slab Co. [1887] 38 Ch. D. 260 at p. 264.
3. See Gore-Browne, 36th ed. p. 226.
4. National P. & U. Bank v. Charnley [1924] 1 K. B. 431 at pp. 449-50.
5. Florence Land &c. Co. [1878] 10 Ch. D. 530 ; Wheatley v. Silkstone &c. Coal Co. [1885] 29 Ch. D. 715.
6. Illingworth v. Houldsworth [1904] A. C. 355 ; Panama &c. Mail Co. [1870] 5 Ch. App. 318.

down the principle that "a floating security is an equitable charge on the assets for the time being of a going concern ; it attaches to the subject charged in the varying conditions it happens to be from time to time. It is of the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern or until the person in whose favour the charge is created intervenes. His right to intervene may of course be suspended by agreement. But if there is no agreement for suspension, he may exercise his right whenever he pleases" (last note, last page). For the meaning of "floating charge" see the case noted below [1].

In the case of a fixed charge for the recovery of a specific sum of money from a specific property, a transfer of an interest immediately takes place when the charge is created, while a floating charge for the recovery of money from the general assets is contingent, that is, on the occurrence of some event a fixed sum of money becomes recoverable from the specific assets which are in existence at the time. When the contingency arises, the charge is crystalized and then becomes a fixed charge. A floating charge is an agreement by which the creator of the charge stipulates that in the event of certain contingency an interest in the property, which happens to be in his possession at the time, shall be conveyed to the holder of that charge [2].

A floating charge on a part of a company's property is within this section [3]. The principal tests whether the charge is a floating one are : *first*, if it is a charge upon all of a certain class of assets, present or future ; *secondly*, if the assets charged would, in the ordinary course of business, be changing from time to time and *thirdly*, if expressly or by necessary implication the company has the power, until some step is taken by the debenture holders or trustees, of carrying on its business in the ordinary way so far as regards the assets charged [4]. In this last cited case the House of Lords held that a general charge on book-debts, present or future, was a floating charge, although not expressed to be so and that it required registration [4].

When the directors of a company pledge its movable assets but they remain in possession as agent of the pledgee, a floating charge is created and if it is not registered, it is void against the liquidator [5].

Money paid to the sheriff as a trade debt owing by a company to the execution creditor cannot be claimed by the receiver appointed by debenture holders having a floating charge on the assets of the company [6].

It is not an incident of a floating charge that the company can create further floating charges ranking *pari passu* with or in priority to it [7]. In the undernoted case in the Calcutta High Court Chief Justice Sir George Rankin sitting with Mr. Justice Mukherji has discussed the question of "floating charge" elaborately and their lordships have held that where there are other elements of a floating charge but possession is given to the lender, this prevents the charge being a floating one [1].

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[1] Govt. Stock &c. Investment Co. v. Manilla Ry. Co. [1897] A. C. 81 at p. 86.

[2] U. P. Government v. Manmohan [1941] A. 345 F. B. at p. 348.

[3] Houldsworth v. Yorkshire Wool Combers' Assn. [1903] 2 Ch. 284 ; Balasubrahmania v. Kandasami [1916] 32 I. C. 91 ; see also Imperial Bank of India v. Bengal National Bank [1931] P. C. 245 at p. 247, 58 I. A. 323, 35 C. W. N. 1034 ; Maheswari Bros. v. O. L., Indra Sugar Works [1938] A. 574, [1938] All. 896.

[4] Illingworth v. Houldsworth (supra). See also Maheswari Bros. v. O. L., Indra Sugar Works (supra) ; Indus Film Corpn. [1939] S. 100.

[5] D. Pudumjee & Co. v. Moos [1926] B. 28, 27 Bomb. L. R. 1218, following Illengworth v. Houldsworth, (supra).

[6] Heaton & Duggard Ltd. v. Cutting Bros. Ltd. [1925] 1 K. B. 655 approving Robinson v. Burnell's Viena Bakery Co. [1904] 2 K. B. 624.

[7] Benjamin Cope and Sons [1914] 1 Ch. 800.

Right of debenture-holder.

A debenture-holder cannot single out and take a particular debt or piece of property while allowing the company to trade with the rest of its assets [2]. If the debenture gives no security on the assets of the company, the debenture-holder's position is no better than that of an unsecured creditor [3]. Words in a debenture prohibiting a company from creating a prior charge are to be read strictly, and they do not extend to defeat the rights obtained under a garnishee order [2]. The conduct of a debenture-holder's action begun by a person whose transactions with the company require investigation or whose interests are shown to be adverse to the remaining debenture-holders, may be given by the Court to an independent party [4]. Where the security of the debenture-holders is limited to block, machinary, stores and goods, it does not extend to the usufruct of the property and money realised from leases [5].

In an action against a company to enforce a mortgage by foreclosure all the holders of debentures which rank after the mortgage must be made parties as persons interested in the equity of redemption. A single debenture-holder cannot be appointed to represent as defendant all debenture-holders belonging to the same class [6].

Debentures may be issued in respect of existing debts [7]. The condition in a debenture that payment is to be made at a certain time and place is not broken unless demand is made by the debenture-holder at that place [8]. A provision in the articles that irregularities shall not affect the debentures will protect a *bona fide* holder of debentures [9].

Different kinds of debentures.

Debentures may be for a fixed term of years or repayable on notice, or irredeemable [10]. They can be so framed as to be payable to bearer. The custom to treat debentures to bearers as negotiable by delivery is recognized by the law merchant [11].

Specific charge & floating charge.

Mortgage debentures usually contain a charge upon the undertaking of the company and all its property, real or personal, whether present or future, and may or may not give a charge upon uncalled capital. "A specific charge is one that without more fastens on ascertained or definite property or property capable of being ascertained and defined, whereas a floating charge is ambulatory and shifting in its nature, hovering over and, so to speak, floating with the property which it is intended to affect, until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp" [12]. Where by the debenture the company charged its undertaking, all its property, present and future, including its uncalled capital, the property included in the charge consisted of every asset of the company including its right to the renewal of a lease 1.

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[1] J. D. Jones & Co. v. Ranjit Roy [1927] C. 682, 54 Cal. 513, 103 I. C. 748.

[2] Robson v. Smith [1895] 2 Ch. 118, approved by C. A. in Evans v. Rival Granite Quarries [1910] 2 K. B. 979.

[3] Spiral Globe Ltd. [1902] 1 Ch. 396.

[4] Service Club E. Syndicate [1930] 1 Ch. 78.

[5] Peoples Bank of N. India v. Lucknow Sugar Works [1936] 163 I. C. 194.

[6] Westminster Bank v. Residential Properties Improvement Co. [1938] Ch. 639 ; Griffith v. Pound [1890] 45 Ch. D. 533 ; Wallace v. Evershed [1899] 1 Ch. 891.

[7] Seligman v. Prince & Co. [1895] 2 Ch. 617.

[8] Escalera Silver Co. [1908] 25 T. L. R. 87.

[9] Davies v. R. Bolton & Co.]1894] 3 Ch. 678.

[10] Willey v. Stocks [1909] 26 T. L. R. 41, [1912] 2 Ch. 134 note.

[11] Johnston Foreign Patents Co. [1904] 2 Ch. 234.

[12] Per Lord Macnaghten in Illingworth v. Houldsworth (supra) at p. 358.

Notice.

Registration is notice to all the world of the existence of the debentures, but not of their contents 2. A bank having notice that there were debentures which required to be filed, or of the existence of the debentures ranking in priority to others, is not to be held to have notice of the terms of such debentures so as to preclude it from making advances on a specific mortgage 2.

Where debentures are issued but not registered.

Where debentures have been issued but not registered, the company may, at any time before liquidation, by arrangement with the holders, cancel the debentures and issue a new series in their place registering the new issue within 21 days 3. A deliberate issuing of substituted debentures every 14 days to avoid registration does not invalidate the final debenture if registered within 21 days of its issue 3. One debenture may be issued in the place of several redeemed debentures 4.

Where the time for registration has been exceeded, the company can by agreement with the lender cancel the unregistered debentures and issue fresh ones in place of them 5.

Joint debentures.

If several companies issue joint debentures to secure a fund advanced for their mutual benefit, a valid charge will be created on the assets of each company to the extent to which the fund has been applied to the purposes of that company 6.

Place for payment.

Where no place for payment of a debenture is provided, the company must seek out the creditors, if within the reach, and pay them 1. Where there is a condition for payment of a sum at a time and place certain, the condition is not broken by non-payment at the time unless the demand for payment is made at the specified place 7.

Specific performance.

The right to specific performance of the terms of a debenture would be destroyed where the company having power to do so forfeited the debentures for non-payment of calls 8.

Holder of security may fall between two stools.

The holder of a security may fall between two stools; as when a lender had registered an agreement to give him a floating charge and subsequently obtained within three months of the winding up a debenture containing the agreed charge, it was held that neither the agreement nor the debenture was enforceable 9.

Seal.

In the absence of a special provision in the articles a mortgage debenture does not require seal. Even if the articles require debentures to be sealed, an unsealed debenture is good as an agreement to give a debenture 10.

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1. Gough's Garages, Ltd. v. Pugsley [1930] 1 K. B. 615 (625).
2. Standard Rotary Machine Co. [1906] 95 L. T. 829; Wilson v. Kelland [1910] 2 Ch. 306.
3. Renshaw & Co. [1908] W. N. 210.
4. Appleyard v. New London Omnibus Co. [1908] 1 Ch. 621.
5. N. Defries & Co. [1904] 1 Ch. 37; Cardiff Workmen's Cottage Co. [1906] 2 Ch. 627 at p. 630.
6. Johnston Foreign Patents Co. [1904] 2 Ch. 234.
7. Thorn v. City Rice Mills Co. [1889] 40 Ch. D. 357; Fowler v. Midland Electric Corporation [1917] 1 Ch. 656.
8. Kuala Pahi Rubber Estate v. Mowbray [1914] W. N. 321, 111 L. T. 1072.
9. Francis v. Gregory Love & Co. [1916] 1 Ch. 203.
10. Fire-proof Doors Ltd. [1916] 2 Ch. 142; Probodh v. Road Ralis Ltd. [1930] C. 782, 57 Cal. 1101, 34 C.W.N. 570.

Duty on amount & stamp.

Where debentures are redeemable at a sum in excess of the amount advanced, duty is chargeable on the additional amount also [1] ; but where debentures are payable on a fixed date at par and a company merely has the option of redeeming them earlier at a premium, no duty is payable on the premium [2]. For Stamp see Appendix—"Stamp Duty."

Registration.

Where a debenture creates a charge on immovable property, even if it be for less than Rs. 100, it requires registration under s. 59 of the Transfer of Property Act IV of 1882, because after amendment of s. 100 of the said Act by Act XX of 1929 the provisions of the aforesaid s. 59 relating to a simple mortgage would apply to a charge on immovable property [3].

Appointment of manager in debenture holders' action.

The Court may appoint a manager in a debenture-holders' action provided the goodwill or business of the company is charged by the debentures expressly or by implication. A charge on all the company's properties and effects whatsoever is sufficient for the purpose [4]. But if the company be a statutory one and of a public nature, its undertaking cannot be ordered to be sold [5] ; a sale of such property even with the sanction of the Court is a nullity [6].

In construing a debenture the Court cannot refer to the prospectus pursuant to which the debenture was issued [7].

Power to modify provisions.

The provision of a power to modify the terms on which debentures are secured bears some analogy to such a power as that conferred by s. 20 which enables a majority of the shareholders by special resolution to alter the articles. These powers conferred on a majority must be exercised subject to a general principle which is applicable to all authorities conferred on majorities of classes enabling them to bind minorities, *viz.*, that the power given must be exercised for the purpose of benefiting the class as a whole and not merely individual members only ; subject to this the power may be unrestricted [8].

Date when charge is created.

The date of the creation of a mortgage or charge by a company is the date when the instrument of mortgage or charge is executed and not the date when it is issued to the incumbrancer [9], or when any money is subsequently advanced on it [10]. The registration must be effected within 21 days of such date. If it is not done so, the mortgage or charge is void against the liquidator and the creditors of the company [11].

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[1] Rowell v. Commissioner of Inland Revenue [1897] 2 Q.B. 194.

[2] Knight's Deep Ltd. v. „ ” ” [1900] 1 Q.B. 217.

[3] Tenneti Viswanadhan v. M. S. Menon [1939] M. 202, [1939] Mad. 199, [1939] 1 M. L. J. 185 (203).

[4] Leas Hotel Co. [1902] 1 Ch. 332.

[5] Saunders v. Bevan [1912] 107 L.T. 70 ; Crystal Palace Co. [1911] 27 T.L.R. 413, 104 L. T. 898.

[6] Woking Urban District Council Act [1914] 1 Ch. 300.

[7] Tewkesbury Gas Co. [1911] 2 Ch. 279, affirmed on appeal in [1912] 1 Ch. 1.

[8] Per Lord Haldane in British America Nickel Corporation v. M. I. O'brien Ltd. [1927] A.C. 369, 371 ; see also New York Taxi Cab Co. [1913] 1 Ch. 1.

[9] Appleyard v. New London Omnibus Co. (infra).

[10] Appleyard v. New London Omnibus Co. [1908] 1 Ch. 621 ; Esberger & Son Ltd. v. Capital & Counties Bank (infra).

[11] Esberger & Son Ltd. v. Capital & Counties Bank [1913] 2 Ch. 366 ; Ladenburgh & Co. v. Goodwin &c. Co. [1912] 3 K.B. 275.

Parties cannot alter effect of the section.

The parties to the transaction cannot alter the effect of the section by adopting a form which does not accord with the real transaction, for instance, by executing a deed of assignment instead of a mortgage 1. But where the agreement is for an out and out sale, it does not require registration under this section 2. "It is an old law, and plain law, that in transactions of this sort the Court must consider whether or not the documents really mask the true transaction. If they merely mask the transaction, the Court must have regard to the true position, in substance and in fact, and for this purpose tear away the mask or cloak that has been put upon the real transaction. In *Helby* v. *Mathews* 3 Lord Herschell states the principle that we have to follow, in the opening sentences of his speech : 'My Lords, it is said that the substance of the transaction evidenced by the agreement must be looked at and not its mere words. I quite agree. But the substance must, of course, be ascertained by a consideration of the rights and obligations of the parties, to be derived from a consideration of the whole of the agreement'" 4. A mortgage of substituted property made pursuant to the provisions of a trust deed requires registration 5, unless debentures have been registered under the next section 6.

Object of registration.

The object of registration of charge under this section is to ensure means of notice to those who contemplate giving credit to the company. But where through misapprehension an earlier mortgage was not at first registered, but a later mortgagee who had registered his mortgage and his assignee had notice of the earlier mortgage and also notice of the defect of registration, the equitable doctrine enunciated by Lord Eldon in *Davis* v. *Earl of Strathmore* 7 that a person who registered a mortgage with notice of a prior unregistered mortgage should not be allowed to obtain priority did not apply and the later mortgagee and his assignee were not precluded from relying on the section 8.

The proper means of obtaining a decision of the Court as to whether registration of the mortgages &c. is necessary, is by a special case 9.

Charge created in favour of officer.

A charge created by the directors of a company on its assets when the company is still a going concern is not illegal, but a charge created in favour of its officers is void when not registered 10.

Effect of omission to register.

A mortgagee, even though he be a director, does not lose his security by an omission to see that it is entered on the register of mortgages 11, without concealment, although he does so if the mortgage is one that requires registration under this section and is not registered. The priority of mortgages is not affected by any imperfection of the register kept by the company 12. An

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1. Sanderson & Co. v. Clarke [1913] 29 T. L. R. 579.
2. George Inglefield, Ltd. [1933] 1 Ch. 1.
3. [1895] A. C. 471.
4. George Inglefield Ld. (supra) at p. 17.
5. Cornbrook Brewery v. Law Debenture Corporation [1904] 1 Ch. 103.
6. Cunard Steamship v. Hopwood [1908] 2 Ch. 564.
7. [1801] 16 Ves. 419 at p. 428.
8. Monolithic Building Co. [1915] 1 Ch. 463.
9. Cunard Steamship Co. v. Hopwood [1908] 2 Ch. 564.
10. Balasubramanya v Kandaswami [1916] 32 I. C. 91.
11. Wright v. Horton [1887] 12 App. Cas. 371.
12. General South American Co. [1876] 2 Ch. D. 337.

instrument creating a charge on the property of a company, if it is not registered as required by this section, is void against the official receiver 1.

It is necessary to file with the registrar the particulars of a mortgage by deposit of title deeds, whether or not it is accompanied by a memorandum of deposit 2.

An agreement to give security, if expressed so as to create a present equitable right to a security, creates a charge and, if not registered, will be void as against the liquidator and any creditor of the company 3.

In default of compliance with the provisions of this section as to registration a mortgage or charge will confer no security on the company's property or undertaking as against the liquidator or any creditor. This principle applies even where a subsequent registered incumbrancer had express notice of the prior mortgage at the time when he took his own security 4. A charge which is not registered under this section is void against all the creditors of a company irrespective of the date on which their debts accrued ; and the fact that decrees have been obtained on such unregistered mortgages prior to the winding-up application does not take it out of the operation of this section. Such a decree-holder cannot stand outside the winding up and realize his security, thereby diminishing the assets divisible among the creditors 5. This section does not however avoid absolutely a mortgage not registered with the registrar of companies, but only so far as any security given thereby on the company's property or undertaking. The effect therefore is that such a mortgage is valid as an admission. The Rangoon High Court has held that such a mortgage cannot be repudiated by the company itself so long as it is a going concern though it is void against the liquidator and the creditors in a winding-up 6. If however the Court extends the time for registration under the provisions of s. 120, and the mortgage is registered within that time, it constitutes a valid charge *ab initio*, that is, from the date of execution, subject only to such conditions as are imposed by the Court which extended the time 7. But see the new sub-s. (2) of s. 120.

What amounts to a charge.

The pledge of some goods lying at the customs house and the handing over of the delivery warrant as security for a debt constitute a charge requiring registration 8. A purported assignment of so much of a debt "as may be necessary to indemnify the assignees against an advance" is a charge and as such requires registration, because the Court will look not to the form but the real transaction 9.

Immovable property.

The term "immovable property" includes land, benefits to arise out of land, things attached to the earth, or permanently fastened to anything attached to the earth 10. In certain circumstances machinery may be immovable property, if it is so affixed to the soil as to become immovable property 11. Bonus certificates giving debenture-holders additional benefit to be paid out of the sale of

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1. Indus film Corpn. [1939] S. 100.
2. Maneklal v. Saraspur Manufacturing Co. [1927] B. 167, 29 Bom. L. R. 253.
3. Pegge v. Neath & District Tramways [1898] 1 Ch. 183 ; Jackson & Brasford Ltd. [1906] 2 Ch. 467 at p. 477 ; Orleans Motor Co. [1911] 2 Ch. 41.
4. Monolithic Building Co. [1915] 1 Ch. 643.
5. Sathgram Coal Co. [1936] 40 C. W. N. 1171.
6. Aung Ban v. Chettiar Firm [1927] R. 288, 104 I. C. 326, 5 Rang. 585.
7. Ram Narain v. Radha Kishen [1930] P. C. 66, 57 I. A. 76, [1930] A. L. J. 190, 52 C. L. J. 26.
8. Dublin City Distillery Ltd. v. Doherty [1914] A. C. 823.
9. Sanderson & Co. v. Clarke [1913] 29 T. L. R. 579.
10. S. 3 (25), General Clauses Act X of 1897.
11. Maheswari Bros. v. O. L., Indra Sugar Works [1938] All. 896, [1938] A. 574.

lands secured by a trust deed create charges which require registration 1. For other instances of charge requiring registration see the undernoted cases 2.

Charge on foreign land.

Under the English law a company can create a charge on its lands situated in a foreign country. "An English debenture", observed Lord Swinfen (then Swinfen Eady J.), "purporting to charge by way of floating security all the English company's property and assets does amount, where the English company possesses land abroad, to an agreement to charge that land, and is a valid equitable security according to English law, and the debenture-holders, upon any winding up of that company, would rank as secured creditors in respect of the foreign land, and upon a winding up in England they would be paid in full out of the proceeds of sale of that land, before any distribution of proceeds of it was made among ordinary unsecured creditors. The law on this point is correctly stated by Sir Francis Palmer in the 5th edition of his Company Law at p. 236 : 'Even without complying with the formalities required by the local law in relation to transfers or mortgages, it is competent to a company, to create an effective charge on property belonging to it in a foreign country, for the Court, in virtue of its Chancery jurisdiction in *personam*, enforces equities in regard to foreign land where the mortgagor company is within the jurisdiction [*Penn* v. *Lord Baltimore* (1750) 1 Ves. Sen. 443 (444) ; *Mercantile Investment &c. Co.* v. *River Plate &c. Co.* (1892) 2 Ch. 303 ; Westlake's International Law (1880) 183] ; and in determining whether there is any equity *e. g.*, if for valuable consideration a company agrees to give a charge on foreign property, the Court will enforce it, although the equity may be one not recognized by the *lex loci rei sitæ*' " 3.

Security of book-debts.

An assignment of a book-debt as security for the purpose of securing an existing debt constitutes a mortgage of that debt and unless it is registered as required by cl. (d), the assignment will be inoperative as against the liquidator and the creditors of the company 4. But where a letter is an assignment of a part of a book-debt and is not "charge" within the meaning of this section, it does not require registration 5.

Assignment of present and future book-debts of a company by way of security to the guarantor of its overdraft at a bank is within the provisions of cl. (f) 6.

Misapplication of money borrowed.

Where a company has a general borrowing power, a lender is not bound to enquire into the purposes for which the money is intended to be applied and a misapplication of it by the company will not invalidate his security, provided that the lender was not aware at the time of the loan of the intended misapplication 7.

A trading company 8 or a banking company 9 has an implied power to borrow

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1. See Ladenburgh & Co. v. Goodwin &c. Ltd. [1912] 3 K. B. 275 ; Sanderson & Co. v. Clarke (supra).
2. Columbian Fireproofing Co. [1910] 2 Ch. 120 ; Re David Allister Ltd. [1922] 2 Ch. 211 ; Wrightson v. McArthur & Hutichison's Ltd. [1921] 2 K. B. 807.
3. British South African Co. v. De Beers Consolidated Mines [1910] 1 Ch. 354 (357), followed in Anchor Line (Henderson Bros.) Ltd. [1937] Ch. 483.
4. Ranjit v. David [1935] C. 218, 38 C. W. N. 1190, 62 Cal. 1, 155 I.C. 193. See also Hoare v. British Columbia Development Assn. [1912] 107 L. T. 602.
5. Ashby Warner & Co. v. Simmons [1936] 52 T. L. R. 613 C.A.
6. Illingworth v. Houldsworth [1904] A.C. 355.
7. David Payne & Co. [1904] 2 Ch. 608.
8. Jackson v. Rainford Coal Co. [1896] 2 Ch. 340.
9. Bank of Australasia v, Breillat [1847] 6 Moo. P. C. C. 152, 195. Vide s. 114 post.

Borrowing powers of a company.

money, but not any other company[1]. If the memorandum of association gives limited power to borrow and mortgage, the limit cannot be exceeded[2]. But if the loan is unauthorized, the lender may stand in the shoes of a previous lender whose money has been paid off by the money of the former[3]. The directors may be personally liable if they represented that they had authority to issue the debenture when they had not[4]. Where one of the clauses of the memorandum of a bank set out that among the objects for which the bank was established was "to raise money by the issue of shares (preference, ordinary or deferred), debentures, debenture-stock, bond and other securities, and to invest the moneys so raised, or any part thereof, upon any of the investments specified in this memorandum", it was held by Mr. Justice Costello that the bank was not restricted to the raising of debentures for the purpose of obtaining money to invest and not otherwise[5].

If the borrowing is beyond the powers of the company, the loan as well as all securities of it are void. But if the loan is merely beyond the powers of the directors it may be rendered valid by acquiesence or ratification by the directors[6]. Where an association having no borrowing power received money by way of loan or advance, the following propositions were laid down by Buckley J.: (1) If the result of the transaction was that the indebtedness was not increased because the new loan was applied in discharging an old debt, then it was not to be regarded as a borrowing transaction, for the invalid lender could be regarded as standing in the place of those whose debt had been paid off; (2) the same doctrine was applicable even when the loan was applied in discharging not an old debt but a future debt [*Baroness of Wenlock* v. *River Dee* Co. (1887) 19 Q. B. D. 155]; (3) if the lender could identify his money or the investment of his money in the hand of the borrower, he could call for its return. In such a case he was entitled to what was commonly called a tracing judgment; but (4) if the lender could not bring himself within any of the above propositions, then he was a person who was unable as against the borrower to affirm that he held a debt, either legal or equitable. Neither in a Court of law nor in a Court of Equity could he affirm that he was a creditor or entitled to such a right or claim as would support a winding up petition"[7]. On appeal from this case the House of Lords held (1) that the power to borrow must be limited to borrowing for the proper objects of the society, and that the carrying on the banking business was *ultra vires*; (2) that the depositors were not entitled to recover money paid by them on an *ultra vires* contract of loan on the footing of money had and received by the society to their use; (3) that the assets remaining after payment of the outside creditors must be taken to represent in part moneys which the depositors could follow, as having been invalidly borrowed, and in part moneys which the society could follow as having been wrongfully employed by its agents in the banking business and (subject to any application by any individual depositor or shareholder with a view to tracing his own money into any particular asset and to the costs of liquidation) ought to be distributed *pari passu* between the depositors and the unadvanced shareholders according to the amounts respectively credited to them in the books of the society at the commencement of the winding up 1.

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[1] Blackburn B. B. Society v. Cunliffe, Brooks & Co. [1882] 22 Ch. D. 61.
[2] Wenlock v. River Dee Co. [1885] 10 App. Cas. 354; Howard v. Patent Ivory Manufacturing Co. [1888] 38 Ch. D. 156.
[3] Neath Building Society v. Luce [1889] 43 Ch. D. 158.
[4] Firbank's Executors v. Humpheys [1886] 18. Q. B. D. 54.
[5] Imperial Bank v. Bengal National Bank [1930] C. 536 (537), 57 Cal. 328, 127 I. C. 760.
[6] Irvine v. Union Bank of Australia [1877] 2 App. Cas. 366.
[7] Birkbeck P. B. Building Soceity [1912] 2 Ch. 183 C. A.

A pledge of securities gives a power of sale on default of payment on the due date or if no date of payment is fixed after notice 2.

Meaning of "undertaking." The word "undertaking" means all the property, present or future, of a company, and a charge thereon is effective and operates by way of floating security 3.

Certificate conclusive. The certificate of the registrar is conclusive evidence that all the requirements of the section as to registration have been complied with 4.

By s. 122, *post* heavy penalties have been provided for omission by a company to register the particulars with the registrar as required by this section 5.

Registration of charges on properties acquired subject to charge.

109A. (1) *Where after the commencement of the Indian Companies (Amendment) Act, 1936, a company registered in British India acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed :*

Provided that, if the property is situate and the charge was created outside British India, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) *If default is made in complying with this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of five hundred rupees.*

This section is new. It has been inserted by the Companies (Amendment) Act, 1936. It is a reproduction of s. 81 of the English Act of 1929. See Introduction.

Particulars in case of series of debentures entitling holders *pari passu*.

110. Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient for the purposes of section 109 if there are filed with the registrar within twenty-one days

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1. Sinclair v. Brougham [1914] A. C. 398.
2. Deverges v. Sandeman, Clark & Co. [1902] 1 Ch. 579 at p. 593.
3. Re Panama &c. Mail Co. [1870] 5 Ch. App. 318.
4. Leicester v. Yolland &c. Ltd. [1908] 1 Ch. 152.
5. See M. I. G. Trust Ld. [1933] 1 Ch. 542 C. A.

after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

(*a*) the total amount secured by the whole series ; and

(*b*) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined ; and

(*c*) a general description of the property charged ; and

(*d*) the names of the trustees (if any) for the debenture-holders ;

together with the deed or a copy thereof verified in the prescribed manner containing the charge, or if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

Application. This section provides for an alternative mode of registration [1], and it is applicable both to debentures and debenture stock [2].

Protection of debentures. The registration of a series of debentures protects not only debentures of that series properly issued, but also documents purporting to be debentures of that series which owing to some technical defect can only be upheld as agreements for those debentures, and it is not necessary to register these agreements separately [3].

Debentures ranking pari passu. As a general rule debenture-holders of the same series are made to rank *pari passu inter se*. If such a debenture-holder gets judgment, it enures for the benefit of all the debenture-holders [4]. If he obtains a collateral security he holds it as a trustee for all [4].

Where debentures are issued creating a charge, it is usual to declare expressly that the charges created by all the debentures of the series are to rank equally and without priority of one over another. If it is not so declared each debenture creates a charge ranking in priority to all others issued subsequently, but postponed to all issued before it [5].

If there is a series entitled in one event to rank *pari passu*, but not in another event, and the registrar registers it under this section and certifies it as a series entitled *pari*

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[1] Harrogate Estates [1903] 1 Ch. 498.
[2] Cunard Steamship Co. v. Hopwood [1908] 2 Ch. 564.
[3] Fireproof Doors Ltd. [1916] 2 Ch. 142.
[4] Bowen v. Brecon Ry. Co. [1867] L. R. 3 Eq. 541.
[5] Lister v. H. Lister & Sons [1893] 68 L. T. 826, 9 T. L. R. 296.

passu, that will not make the series rank *pari passu* [1]. But this certificate will be conclusive under s. 114 that the requirements of the section as to registration have been complied with [1]. The certificate is also conclusive although some required particulars have not been given to the registrar or entered on the register [2].

Meaning of book-debts.

"Book-debt" means debts arising in a business in which it is the proper and usual course to keep books, and which ought to be entered in such books, and are not confined to debts which are actually entered in the books—per Esher M. R. in *Official Receiver* v. *Tailby* [3]. As to how a charge may be created in book-debts see *Gorringe* v. *Irwell India Rubber Works* [4]. Where a bill of exchange has actually been entered in the books of the company it is a book-debt; see *Dawson* v. *Isle* [5]. Future book-debts can be charged; see *Tailby* v. *Official Receiver* [6].

Charge.

Where motor vans were garaged at the factory and loaded there with products of the factory, they were held to be "plants" used in or about the premises within the meaning of the deed of charge [7].

Particulars in case of commission, etc., on debentures.

111. Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 109 and 110 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

This section recognizes the legality of issuing debentures at a discount.

Register of mortgages and charges.

112. (1) The registrar shall keep, with respect to each company, a register in the prescribed form of all mortgages and charges created by the company after the commencement of this Act and requiring registration under section 109, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

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[1] Yolland & Birkett Ltd. [1908] 1 Ch. 152.

[2] Cunard Steamship Co. v. Hopwood [1908] 2 Ch. 564, 578 ; National P. & U. Bank v. Charnley [1923] W. N. 315, [1924] 1 K. B. 431.

[3] [1886] 18 Q. B. D. 25, 29.

[4] [1886] 34 Ch. D. 128.

[5] [1906] 1 Ch. 633.

[6] [1888] 13 App. Cas. 523.

[7] National P. & U. Bank v. Charnley [1924] 1 K. B. 431.

(2) After making the entry required by sub-section (1), the registrar shall return the instrument (if any) or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 109 or section 110 to the person filing the same.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection.

Sub-s. (2) does not occur in the English Act.

Index to register of mortgages and charges.

113. The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Certificate of registration.

114. The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 109, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 109 to 112 as to registration have been complied with.

Certificate conclusive.

Where the certificate identified the instrument of charge and stated that the mortgage or charge thereby created had been duly registered, it must be understood as certifying the due registration of all the charges created by the instrument, including that of chattels, and it is conclusive evidence of the due registration of the chattels, none the less, because the register in omitting to mention them is not merely defective but misleading 1. If after the issue of debentures a certificate of registration is obtained under this section, nothing done subsequently by way of alteration by the registrar of his own accord affects the validity of the documents as between the company and the debenture-holder 2.

For other cases see notes to s. 110.

Endorsement of certificate of registration on debenture or certificate of debenture stock.

115. The company shall cause a copy of every certificate of registration, given under section 114, to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered :

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of registration of any

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1. National P. & U. Bank v. Charnley [1924] 1 K. B. 431.
2. Imperial Bank v. Bengal National Bank [1930] C. 536, 57 Cal. 328, 127 I.C. 760.

mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

116. (1) It shall be the duty of the company to file with the registrar for registration the prescribed particulars of every mortgage or charge created by the company and of the issues of debentures of a series requiring registration under section 109, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

Duty of company and right of interested party as regards registration.

(2) Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(3) *Whenever the terms or conditions or extent or operation of any mortgage or charge registered under this section are modified, it shall be the duty of the company to send to the registrar the particulars of such modification, and the provisions of this section as to registration of mortgage or a charge shall apply to such modification of the mortgage or charge as aforesaid.*

The new sub-s. (3) has been added by the Companies (Amendment) Act, 1936. For its effect see Introduction.

117. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 109 to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

Copy of instrument creating mortgage or charge to be kept at registered office.

118. (1) If any person obtains an order for the appointment of a receiver of the property of a company, or appoints such a receiver under any powers contained in any instrument, he shall, within fifteen days from the date of the order or of the appointment under the powers contained in the instrument, file notice of the fact with the registrar, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

Registration of appointment of receiver.

(2) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Appointment of receiver.

A receiver will be appointed if the company's business is practically at an end and the only asset remaining is a reserve fund created out of profits earned at an earlier date 1, or if the business is about to be shut down 2. When a receiver has been appointed and any application to the Court becomes necessary, it should be made by the person who has appointed or procured the appointment of the receiver 3.

Receiver's position.

A receiver who has been appointed under the terms of a mortgage debenture issued by a company is the agent of the company and not of the debenture-holders; and in the absence of a notice of a claim against the company, he is under no personal liability to refund moneys which he has paid into a receivership account 4. Where after the appointment of a receiver by the debenture-holders in exercise of the power conferred by the debenture the company goes into liquidation, the receiver is entitled to enforce the right to obtain renewal of a lease notwithstanding the liquidation 5. "It is perfectly true (and it has been laid down over and over again)", observed Romer L. J., "that where, as happened in this case, the debenture or trust deed securing the debentures contains the usual clause that the receiver appointed under the deed shall be deemed to be the agent of the company, that the winding-up of the company or the compulsory liquidation of the company puts an end to the agency. But it does not put an end in any way to the powers of the receiver. In my opinion when this liquidation order was made, the right of the receiver to proceed in the name of the company in the County Court was in no wise affected" 6.

His powers.

As to a receiver's power to make contracts and his personal liability in this respect, see *Moss Steamship Co.* v. *Whinney* 7. A receiver and manager, when duly appointed by the lender under the terms of a debenture, has an implied power to sue in the company's name for the purpose of getting in any property charged or for recission of a contract or alternatively for specific performance 8.

His liability.

The receiver will not be personally liable for loans made in pursuance of leave given to him by the Court to borrow money, unless he has taken that liability upon himself by the terms of the loan 9. Where a receiver has not applied to the Court for leave to employ an agent, the latter is not entitled to any commission; but the Court has a discretion to award him such compensation for his efforts as the Court considers just in the circumstances of the particular case 10.

Jurisdiction.

The Court has no jurisdiction to appoint a receiver except in a debenture-holder's action. If it is necessary to protect the assets, other means must be sought which are provided in the Companies Act 11.

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1. Tilt Cove Copper Co. [1913] 2 Ch. 588.
2. Branstien v. Marjolaine Ltd. [1914] W. N. 335.
3. Parker v. Dunn [1845] 8 Beav. 491; Windschuegl v. Irish Polishes Ltd. [1914] 1 I. R. 33.
4. Bissel v. Aeriel Motors [1910] 27 T. L. R. 73.
5. Gough's Garages Ltd. v. Pugsley [1930] 1 K. B. 615.
6. Ibid at p. 626.
7. [1912] A. C. 254.
8. M. Wheeler & Co. v. Warren [1928] Ch. 810.
9. Hoffman v. A. Boynton Ltd. [1910] 1 Ch. 519.
10. National Flying Service Ltd. [1936] 1 Ch. 271.
11. Kailash v. Sadar Munsiff of Silchar [1925] C. 817, 52 Cal. 513.

Power is fiduciary.

If the debentures confer on a named debenture-holder the power to appoint a receiver of the property charged, the power is fiduciary and must be exercised for the benefit of the debenture-holders generally 1. Such an appointment does not oust the jurisdiction of the Court to appoint a receiver 2. On the other hand a winding-up by the Court does not take away the right of the debenture-holders to have a receiver, but in the absence of special circumstances the official liquidator should be appointed receiver to avoid expense and conflict 3.

Court's officers.

A receiver appointed by the Court is its officer and any interference with his possession is a contempt of Court 4. He may be discharged if his appointment has heen procured by means of a misleading affidavit 5.

When action for receiver may be commenced.

The action for a receiver may be commenced before there is any default, and if default occurs before the hearing, the appointment may be made 6. A receiver may be appointed even before the principal or interest is in arrear if the assets are in danger 7, or a sale will be necessary in the near future 8 or in a case of "jeopardy." 9.

Contempt of Court.

The publication of injurious misrepresentations concerning parties to proceedings, such as a receiver in a debenture-holders' action in relation to those proceedings, may amount to contempt of Court, because it may cause those parties to discontinue or to compromise and because it may deter persons with good causes of action from coming to Court, and is thus likely to affect the cause of justice 10.

Filing of accounts of receivers.

119. (1) Every receiver of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall once in every half-year while he remains in possession, and also on ceasing to act as receiver, file with the registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also, on ceasing to act as receiver, file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

(2) *Where a receiver of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.*

(3) *If default is made in complying with the requirements of this section, the company and every director, manager, managing agent,*

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1. Maskelyne British Typewriter Co. [1898] 1 Ch. 133.
2. Slogger Automatic Feeder Co. [1915] 1 Ch. 478.
3. Buckley 10th ed. pp. 251, 371 and 372 and the cases cited there.
4. Searle v. Choat [1884] 25 Ch. D. 723.
5. Church Press Ltd. [1917] 116 L. T. 247.
6. Carshalton Park Estate [1908] 2 Ch. 62.
7. Wissner v. Levison & Streiner [1900] W. N. 152.
8. Smith v. Wilkinson [1897] 1 Ch. 158.
9. London Pressed Hinge Co. [1905] 1 Ch. 576.
10. William Thomas Shipping Co. [1936] 2 Ch. 368.

secretary or other officer of the company and every receiver who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding two hundred rupees.

Amendment.

By the Companies (Amendment) Act, 1936, sub-sections (2) and (3) have been substituted for the original sub-s. (2). These two new sub-sections have been taken from s. 308 of the English Act of 1929. See Introduction. The original sub-s. (2) was as follows :—

(2) Every receiver who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five hundred rupees.

Rectification of register of mortgages.

120. (1) The Court, on being satisfied that the omission to register a mortgage or charge within the time required by section 109, or that the omission or misstatement of any particular with respect to any such mortgage or charge, *or the omission to give intimation to the registrar of the payment or satisfaction of a debt for which a charge or mortgage was created* was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified, and may make such order as to the costs of the application as it thinks fit.

(2) *Where the Court extends the time for the registration of a mortgage or charge, the order shall not prejudice any rights acquired in respect of the property concerned prior to the time when the mortgage or charge is actually registered.*

Amendment.

By the Companies (Amendment) Act, 1936, the original s. 120 has been re-numbered as sub-s. (1) and words in italics have been inserted therein. By the same Act the new sub-s. (2) has been added. For the effect of the amendments see Introduction.

Meaning of "accident" & "inadvertence."

An "accident" is a mishap or untoward event not expected or designed[1], while the word "inadvertence" includes ignorance of the provisions requiring registration[2]. Here the words, "accidental or due to inadvertence" have a very wide meaning[3].

Where relief is granted.

Relief has been granted where there was delay owing to misunderstanding as to the documents requiring registration ; where the secretary *bona-fide* believed that owing to the date of the resolution alloting the debentures the Act did not apply to them ; where a deed had been sent to India before the Act came into force for execution and registration there but was not executed until after the Act came into force; where the secretary was imperfecty acquainted with the Act; and where there was a difficult question whether registration was necessary or not 1.

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[1] Fenton v. Thorley & Co. [1903] A. C. 443.

[2] Mendip Press [1901] 18 T.L.R. 38.

[3] Jackson & Co. [1899] 1 Ch. 348.

Order without prejudice to rights acquired.

The order under this section is usually expressed to be without prejudice to the rights of parties acquired prior to the time when such charge shall be actually registered 2; but the Court will not necessarily impose any terms for the protection of the unsecured creditors 3. The usual proviso, namely, that the order will be without prejudice to the rights of parties acquired prior to the date of actual registration, only protects creditors who have acquired a security on the property, the subject matter of the charge; the Court will not insert in the order any terms for the protection of unsecured creditors of the company 4.

Ranking pari passu.

If the debentures are registered under an order such as the above before the company goes into liquidation, an ordinary unsecured creditor at the date when the debentures are registered is not entitled to rank *pari passu* with the holders of such debentures, unless he has taken steps to enforce his claim 5.

Effect of order.

When an order extending the time is made in the usual terms as stated above, and before actual registration a winding-up commences, the mortgage or charge, if subsequently registered, will not be effective against the general body of creditors 6. Similarly where the registration is made long after 21 days after the date of mortgage and order of the Court extending the period is vacated, there is no valid registration 7.

An order passed under this section comes under s. 141 C. P. code and is open to review 8.

The last words of sub-s. (1), *viz.* "and may make...thinks fit" are not in the English Act.

Sub-s. (2). The new sub-section (2) makes it clear that the extension of time will not prejudice any right acquired before the actual registration within the extended time. But even before the amending Act it was held that the subsequent registration of a mortgage by leave of the Court could not affect the position in which that mortgage stood, or in other words, a mortgage registered within 21 days of its execution had priority over a mortgage of an earlier date which was subsequently registered after an extension of time 9.

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1. Buckley, 10th ed. pp. 256 & 257 and cases cited there.
2. Spiral Globe, Ld. [1902] 1 Ch. 396; Joplin Breweries Co. [1902] 1 Ch. 79; I. C. Johnson & Co. [1902] 2 Ch. 101.
3. Cardiff Workmen's Cottage Co. [1906] 2 Ch. 627.
4. M.I.G. Trust, Ld. [1933] 1 Ch. 542 C.A.; statement of Buckley J. in Cardiff Workmen's Cottage Co. [1906] 2 Ch. 627, 630 regarding the protection of unsecured creditors was dissented from by Romer L.J. in this case.
5. Ehrmann Brothers [1906] 2 Ch. 697.
6. Anglo-Oriental Carpet Co. [1903] 1 Ch. 914, per Buckley J.; see also Spiral Globe Ltd. [1902] 1 Ch. 396; Ehrmann Bros. Ltd. [1906] 1 Ch. 696; Dinshaw & Co. Bankers Ltd. [1937] O. 62, [1936] O.W.N. 923.
7. Dinshaw & Co. Bankers, Ltd. (supra); Joplin Breweries Co. (supra).
8. Dinshaw & Co., Bankers Ltd. (supra).
9. Radha Kishan v. Ram Narain [1927] O. 300, 102 I.C. 592; Monolithic Building Co. [1915] 1 Ch. 643.

121. (1) *It shall be the duty of the company to give intimation to the registrar of the payment or satisfaction of any charge or mortgage created by the company and requiring registration under section 109 within twenty-one days from the date of the payment or satisfaction thereof.*

Registration of satisfaction of mortgages and charges.

(2) *The registrar shall on receipt of such intimation cause a notice to be sent to the mortgagee calling upon him to show cause, within a time (not exceeding fourteen days) to be fixed by such notice, why the payment or satisfaction of the charge or mortgage should not be recorded.*

(3) *The registrar shall, if no cause is shown, order that a memorandum of satisfaction be entered on the register and shall if required furnish the company with a copy thereof.*

(4) *Where cause is shown, the registrar shall record a notice to that effect in the register, and shall inform the company that he has done so.*

Amendment.

This section is new. By the Companies (Amendment) Act, 1936, this section has been substituted for the original section 121 which empowered the registrar on proof of satisfaction of a mortgage or charge to record the satisfaction in the register. It was not obligatory on a company or the mortgagee to have such satisfaction recorded, and the records of the registrar might accordingly remain incomplete. The amendments were designed to remedy this defect.

The original s. 121 was as follows :

121. The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof.

Entry of satisfaction.

Memo. of satisfaction.

Where a memorandum of satisfaction is executed by the company under a misapprehension, it may be ordered by the Court to be cancelled 1. When once a certificate of registration has been given by the registrar, it is unnecessary for the secured creditors to take any steps to rectify the register, however defective or misleading it may be 2.

122. (1) If any company makes default in filing with the registrar for registration the particulars—

Penalties.

(a) of any mortgage or charge created by the company; or

(b) *of the payment or satisfaction of a debt in respect of which a mortgage or charge has been registered under section 109 or section 109A*; or

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1. C. Light & Co. [1917] W. N. 77.
2. National P. & U. Bank v. Charnley [1924] 1 K. B. 431.

(c) of the issues of debentures of a series,

requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company, and every officer of the company who knowingly and wilfully authorises or permits the default shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

Amendment. By the Companies (Amendment) Act, 1936, in sub-s. (1) the original cl. (b) has been relettered as cl. (c) and the new cl. (b) has been inserted. For the effect of the ammendments see Introduction.

Meaning of "knowingly and wilfully." Where directors instruct the secretary to register the security and he omits to do so, they are not knowingly and wilfully authorizing or permitting the omission [1].

Meaning of "issued." Debentures sealed but not delivered are not "issued" [2]. Debentures agreed to be issued will be treated as "issued" [3].

Company's register of mortages.

123. (1) Every ✱ company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company *and all floating charges on the undertaking or on any property of the company*, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager or other officer of the company knowingly and wilfully authorises or permits the omission of

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1. Borough of Hackney Newspaper Co. [1876] 3 Ch. D. 669.
2. Levy v. Abercorri's Slate Co. [1887] 37 Ch. D. 260.
3. Perth Electric Tramway Co. [1906] 2 Ch. 216.

any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

Amendment.

By the Companies (Amendment) Act, 1936, the word "limited" in the first line after the word "Every" has been omitted and the words in italics in sub-s. (1) have been inserted. For the effect of the amendments see Introduction. The amendment makes it clear that the provisions of the section apply to floating charges as well.

Borrowing powers of a company.

A company has no power to borrow money unless the memorandum or articles of association so provide; but it can do so if such borrowing is incidental to the course of the company's business 1. The ordinary trading company has an implied power to borrow money for the purposes of its business and to give security for its repayment even though no power to do so has been conferred by the memorandum or the articles 2. Where the memorandum mentions as a purpose of the company the "disposing of" its landed property, the company can mortgage it unless expressly prohibited from doing so 3. In the absence of any prohibition a company may secure a past debt by deposit of title deeds 3.

Power to give mortgage.

A company having power to borrow can give a mortgage or charge over all its property including book-debts not yet due 4, or on its uncalled capital 5, except that capital which can be called up only in the event of a winding-up 6. A power to mortgage "the property of the company" 7, or its "property and effects" 8, or its "undertaking and property present and future" 9 does not however authorize a charge on the uncalled capital. But if the company is authorized to mortgage its "assets" 10, or its "property and rights" 11, or its "property and effects or in such other manner as the company may determine" 12, it can create a charge over its uncalled capital. If the company has only a limited power to borrow, a loan beyond the limit and all securities for it are void 13.

Charge created in favour of director or officer.

A charge created by the directors on the assets of the company when it is still a going concern is not illegal; but a charge created in favour of the officers of the company is void if it is not registered under this section 14. A person who ceases to hold any office at the time of creation of the charge is however not an "officer of the company" within the meaning of this section 14.

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1. Blackburn Building Society v. Cunliffe, Brooks & Co. [1882] 22 Ch. D. 61; see also notes to ss. 6 and 109.
2. General Auction Estate Co. v. Smith [1891] 3 Ch. 432.
3. Patent File Co. [1870] 6 Ch. App.83; see the judgment of Sir G. Mellish, L. J. at p. 88.
4. Bloomer v. Union Coal & Iron Co. [1873] 16 Eq. 383; Illingworth v. Houldsworth [1904] A.C. 355.
5. Newton v. Anglo-Australian Investment Co. [1895] A.C. 244 P.C.; Jackson v. Rainford Coal Co. [1896] 2 Ch. 340.
6. Bartlett v. Mayfair Property Co. [1898] 2 Ch. 28.
7. Johnson v. Russian S. Patent Ltd. [1898] 2 Ch. 149; the word "property" is sufficient to include goodwill or business: Leas Hotel Co. [1902] 1 Ch. 332.
8. Sankey B. Coal Co. [1870] 10 Eq. 381.
9. Streatham &c. Estate Co. [1897] 1 Ch. 15.
10. Page v. International Agency [1893] 68 L. T. 435.
11. Howard v. Patent Ivory Manufacturing Co. [1888] 38 Ch. D. 156.
12. Jackson v. Rainford Coal Co. (supra).
13. Wenlock v. River Dee Co. [1885] 10 App. Cas. 354.
14. Balasubramania v. Kandasami [1916] 32 I.C. 91.

S. 68 of Act VI of 1882.

It should be noted that in the corresponding section (s. 68) of the Indian Act VI of 1882 there occurred the following explanation : "Omission to register under the section a mortgage or charge does not render the same invalid. But the officers of the company cannot avail themselves as such of a mortgage or charge specifically affecting property of the company and not so registered." This has been omitted in the present Act.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

124. (1) The copies kept at the registered office of the company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the registrar, and the register of mortgages kept in pursuance of section 123, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding fifty rupees and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and in addition to the above penalty, the Court may by order compel an immediate inspection of the copies or register.

Inspection & right to take copies.

The right given to the holders of stock and debentures of inspecting the registers is not confined to an inspection of the names and addresses only, it may be exercised without assigning any reason, and can be enforced by an injunction 1. The right to inspect the register of mortgages involves a right to take copies of the same 2. The person inspecting the register of the holders of debentures cannot however take a copy himself 3.

In the case noted below 4 "income stock certificates" were held to be debentures and the holders of those certificates were held to be entitled to inspection of the register thereof. The register of mortgages should be open to inspection by any creditor or member of the company or his solicitor or agent 5.

Effect of winding-up.

Upon a winding-up the register cannot be inspected without an order of the Court 6. The word "books" in s. 156 of the English Act of 1862 which corresponds to s. 241 *post* includes the register of mortgages 6.

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1. Holland v. Dickson [1888] 37 Ch. D. 669.
2. Nelson v. Anglo-American Land Co. [1897] 1 Ch. 130.
3. Balaghat Gold Mining Co. [1901] 2 K. B. 665.
4. Lemon v. Austin Friars Investment Trust [1926] Ch. I, C. A.
5. Credit Company [1879] 11 Ch. D. 256.
6. Somerest v. Land Securities Co. [1897] W. N. 29 ; *Vide* s. 241.

Right to inspect the register of debenture-holders and to have copies of trust deed.

125. (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(2) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust-deed of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and the Court may by order compel an immediate inspection of the register.

Right to inspect.

The right to inspect the register does not include the right to take extracts from or to take copies of the entries in the register (see note 3, last page), but a copy may be obtained on payment of the prescribed fee.

Debentures and Floating Charges.

Perpetual debentures.

126. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

Clog on redemption.

This section provides that a condition which would be a clog on the equity of redemption in the case of a mortgage given by an individual shall not be invalid in the case of debentures issued by a company 1. But it has been held that under the ordinary law any provision in a debenture or trust

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1. See Cuban Land Co. [1921] 2 Ch. 147 at p. 151.

deed which amounts to a clog or fetter upon the company's power to redeem the property charged, whether specifically or by way of floating charge, is void in the case of a company as completely as in the case of an individual 1. The equitable principle that a mortgage cannot be made irredeemable applies to other mortgage transactions of companies 2.

Redemption of debentures.

Where the debenture becomes enforceable on the happening of certain events, the debenture holders have a right to require payment on the happening of those events, but they do not put the debenture-holders in a position of being compelled to accept payment. Where the events are entirely within the control of the company it cannot, by determining the event, compel the debenture-holders to accept his money at a moment's notice 3. But debenture-holders cannot refuse to accept payment on the company being compulsorily wound up 4.

Where debentures become enforceable on the happening of certain events, but can only be compulsorily redeemed by the company by payment of a premium thereon, the guarantors of the interest of such debentures can give the usual notice to such debentures-holders and pay them off their principal and interest but without being under the necessity to pay them the premium that the company would have had to pay, if they had wished to pay off the debentures before the security became enforceable 5.

Effect of death of debenture-holder.

The death of a registered holder of debentures does not relieve the company of the obligation to seek out its creditors, the company having been informed before who the person was to whom a tender should be made 6.

Restriction on rights of debenture-holder not illegal.

The condition of debentures issued by a private company made the principal money thereby secured immediately payable in certain events and provided that "no action shall be taken under this debenture except with the consent in writing of a majority of the debenture-holders," the meaning of the terms being defined. The principal money secured by some of the debentures became payable under the conditions and an action was brought to recover the principal with interest. The consent in writing mentioned above had not however been obtained. It was held : (1) that there was nothing illegal in a restriction in a debenture deed on the rights of a debenture-holder, so that a provision that a majority of the debenture-holders might by resolution modify the terms of the debentures or fetter or restrict the rights of the debenture-holders was legitimate, provided that the majority acted in good faith and not by way of oppressing any individual debenture-holder ; (2) that the condition under consideration was not repugnant to the previous condition making the principal money immediately payable in certain events, and, as it was a condition precedent which had not been fulfilled, judgment was given for the defendant 7.

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1. Kreglinger v. New Patagonia Meat &c. Co. [1914] A. C. 25.
2. Knightsbridge Estates Trust v. Byrne [1938] Ch. 741. See also Samuel v. Jarrah Timber Corpn. [1904] A. C. 323, following Noakes & Co. v. Rice [1902] A. C. 24 ; Kreglinger v. New Patagonia Meat Co. [1914] A. C. 25 ; De Beers Consolidated Mimes v. British S. Africa Co. [1910] 2 Ch. 502, [1912] A. C. 52.
3. General Motor Cab No. 2 [1912] 56 Sol. Jo. 573.
4. Consolidated Gold Fields v. Simmer & Jack East Ltd. [1913] 82 L.J. Ch. 214. 108 L. T. 488.
5. Ibid.
6. Fowler v. Midland Electric Corpn. [1917] 1 Ch. 656.
7. Pethybridge v. Unibifocal Co. [1918] W. N. 278.

Construction of debenture deed.

A company issued debentures which it covenanted to pay off "on or after January 1st, 1898," the debentures to be paid off being selected by ballot, and six months' notice being given to the holders thereof. The company contended that the debentures were repayable after the above date only after a ballot had been held and six months' notice had been given to the holders of the drawn debentures. It was held, that inasmuch as the convenant created a liability to pay off on or after the date specified upon demand, the clause seeking to limit its operation to such debentures as should be drawn by ballot was void for repugnancy [1].

Where the combined effect of the debentures and trust deed executed by a company was to give a floating charge on its assets and it was provided therein that the principal money thereby secured should become immediately payable if an order was made or an effective resolution passed for winding up the company, it was held that when the business of the company came to an end by winding up the security ceased to be a floating one and the debentures became immediately payable and the security became enforceable [2]. As to how the amount due to each debenture-holder for interest and principal should be calculated in a case where a series of debentures are issued to rank *pari passu* as a floating charge, see the case noted below [3].

Stock which is expressed to be "redeemable" at the option of the company is not repayable on the demand of the holder [4].

Power to modify terms.

To give a power to modify the terms on which debentures in a company are secured is not uncommon in practice. The business interests of the company may render such a power expedient even in the interest of the class of debenture-holders as a whole. The provision is usually made in the form of a power conferred by the instrument constituting the debenture security upon the majority of the class of holders. It often enables them to modify by special resolution properly passed the security itself. The provision of such a power given to a majority bears some analogy to such a power as that conferred by s. 13 of the English Companies Act of 1908 (s. 20 of this Act), which enables a majority of the shareholders by a special resolution to alter the articles of association [5]. See notes to s. 109.

Power to re-issue redeemed debentures in certain cases.

127. (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

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[1] Tewkesbury Gas Co. [1911] 2 Ch. 279, affirmed on appeal [1912] 1 Ch. 1.
[2] Player v. Crompton & Co. [1914] 1 Ch. 954.
[3] Midland Express Ltd. [1914] 1 Ch. 41.
[4] Council of Edinburgh v. British Linen Bank [1913] A. C. 133.
[5] British America Nickel Corpn. v. M. I. O'brein Ld. [1927] A.C. 369, [1927] P.C. 62.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have, either before or after the commencement of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty.

(5) Nothing in this section shall prejudice—

(*a*) the operation of any decree or order of a Court of competent jurisdiction pronounced or made before the twenty-fifth day of February, 1910, as between the parties to the proceedings in which the decree or order was made, and any appeal from any such decree or order shall be decided as if this Act had not been passed ; or

(*b*) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

Scope.

The intention of this section is not that the debentures can be made perpetual debentures by the postponement on a re-issue of the date of redemption, but to give the power only to revive the original transaction, not power to enter into a new and different transaction [1]. The power to re-issue debentures cannot extend to give the company power to issue debentures which are not the same in their terms, as the original debentures [1].

Effect of sub-s. (1).

Sub-sec. (1) nullifies the effect of the decision of the Court of Appeal in *George Routledge & Sons* [2] which declared that a company could not re-issue any debenture which it had paid off unless it was a condition of the original issue that the company should have such power.

In sub-sec. (1) the word "always" means "before" the passing of this Act [3].

Effect of sub-s. (3).

Sub-sec. (3) counteracts the effect of *London Petroleum &c. Trust* v. *Russian Petroleum Co.* [4] which held in a case where debentures were deposited to secure advances on current account and the advances were repaid while the debentures remained so deposited, that the debentures had been redeemed and the security was gone.

Section is retrospective.

The section is retrospective except as to cases decided by a Court of competent jurisdiction before 25th February, 1910. A winding up order made before that date is not an "order" within the meaning of sub-sec. (5) [5].

Specific performance of contract to subscribe for debentures.

128. A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

Specific performance.

In the case of debentures issued by a company this section relaxes the rule that specific performance cannot be granted in respect of a contract to lend money even to a company as was held in *South African Territories* v. *Wallington* [6]. Where a loan has been made, the Court will however decree specific performance of an agreement to give security [7].

Where it will not be granted.

A company after forfeiting debentures for failure to pay calls is not entitled under this section to an order for specific performance of a contract to take and pay for debentures, notwithstanding the articles of association containing a stipulation purporting to be applicable to such debentures, that a shareholder after forfeiture of shares shall still be liable for calls as if the shares had not been forfeited [8].

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[1] Autofagasta &c. Ry. Co.'s Trust Deed [1939] Ch. 732.
[2] [1904] 2 Ch. 474. See also Tasker & Sons [1905] 2 Ch. 587.
[3] Fitzgerald v. Pearse [1908] 1 I.R. 279.
[4] [1907] 2 Ch. 540.
[5] New London & Suburban Co. [1908] 1 Ch. 621.
[6] [1898] A. C. 309.
[7] Hermann v. Hodges [1873] 16 Eq. 18.
[8] Kuala Pahi Rubber Estate v. Mowbray [1914] W. N. 321, 111 L. T. 1072.

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

129. (1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

The debts entitled to preferential payment in the winding up are specified in s. 230. For cases see notes to that section.

Preferential payments.

Where a receiver is appointed or takes possession of property as mentioned in this section, the right of preferential payment of one year's assessment of income-tax remains notwithstanding that the assessment is not made until after the date of appointment of the receiver or of his taking possession 1. A receiver and manager appointed by the debenture-holders, who, after notice of any claim that is preferential under the section, pays away the company's assets to ordinary creditors in the process of carrying on its business without making or attempting to make any provision for the preferential claim, is guilty of a breach of the provisions of this section and is liable in damages 2.

Order of payments.

Where in a debenture-holder's action the assets prove insufficient, they are applicable in the following order: (1) costs of realization, (2) costs including remuneration of the receiver, (3) costs, charges and expenses of debenture trust deed including the trustees' remuneration, (4) plaintiff's costs of action, (5) preferential creditors and lastly (6) the debenture-holders 3. For what has been held to be preferential payments under this section see the cases noted below 4.

When the receiver is appointed by a debenture-holder whose debenture is secured by both a fixed and floating charge, the priority given to the preferential debts applies only in respect of assets subject to the floating charge 5. In the last noted case at p. 512 Lawrence L. J., observes: "S. 107 (s. 129 of the Indian Act) is directed specifically to

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1. Gowers v. Walker [1930] 1 Ch. 262.
2. Woods v. Winskill [1913] 2 Ch. 303.
3. Glyncorrwg Colliery Co. [1926] Ch. 951.
4. Ind, Coope & Co. [1911] 2 Ch. 223 ; National P. Bank v. United Electric Theatres [1916] 1 Ch. 132 ; Ashley & Smith Ltd. [1918] 2 Ch. 378.
5. Lewis M. C. Collieries [1929] 1 Ch. 498 C. A. (followed in John v. Suraj Bhan [1938] All. 869, [1938] A. 609).

Priority.

debentures secured by a floating charge and to those only and intended to provide for the payment out of the assets subject to the floating charge of those debts which under the provisions of s. 209 (s. 230, of the Indian Act) would be entitled to priority in the case of a winding-up in priority to the claims of the debenture-holders under the floating charge. In my judgment the fact that the debenture in the present case is one which combines with the floating charge a fixed charge, does not bring the section into operation as against the assets comprised in the fixed charge."

A receiver appointed at the instance of a debenture-holder cannot be allowed to disregard the forward contracts entered into by the company before the appointment of the receiver [1].

Jeopardy.

The security of the debenture-holders cannot be said to be "in jeopardy" unless there is a risk of some portion of it being seized or taken to pay claims which are not really prior to the claims of the debentures-holders. The Court refused to appoint a receiver on the ground of jeopardy where the debenture-holders merely showed that their security, if realized, would be insufficient to pay the principal and interest in full, but could not show any damage or outside creditors seizing the assets [2].

There is jeopardy where practically the only assets of a company consist in its reserve fund and the company proposes to distribute that among its shareholders without making provision for the debenture-holders. In such a case where nothing has otherwise occurred to make the debenture security enforceable, the Court appointed a receiver and this *ipso facto* made the debenture security enforceable [3].

The jeopardy must be from some act which would be wrongful as against the debenture-holder, or which would amount to a destruction of his security. If there is a specific charge on part of the assets and a floating charge on the rest and execution is threatened against the former, it will be a ground for the appointment of a receiver [4].

Receiver.

The section applies even if the receiver is appointed by the debenture-holders and not by the Court [5]. A receiver appointed in a debenture-holder's action may claim recoupment under this section of rates paid by him [6].

Trustees' remuneration.

If the debenture trust-deed so provide, the trustees are entitled to their remuneration in priority to the debenture stock holders, but such remuneration does not continue after the appointment of a receiver [7].

Floating charge.

A floating security remains dormant and cannot become fixed or crystalized until the company ceases to be a going concern or until the debenture-holders intervene by applying for a receiver or otherwise [8]. "A floating charge is a present charge though it does not finally attach or crystalize upon any specific property until the happening of some event which puts an end to the right of the company to deal with the property in the course of its business" [9]. As to what constitutes a floating security see *National P. Bank* v. *United Electric Theatres* (supra).

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[1] Newdigate Colliery Ltd. [1912] 1 Ch. 468.

[2] New York Taxi Cab Co. [1913] 1 Ch. 1.

[3] Tilt Cove Copper Co. [1913] 2 Ch. 588 (New York Taxi Cab Co. was distinguished).

[4] Grigson v. George Taplin & Co. [1915] 112 L. T. 985.

[5] Barnby's Ltd. [1899] W. N. 103.

[6] Mannesman Tube Co. [1901] 2 Ch. 93.

[7] Locke & Smith Ltd. [1914] 1 Ch. 687.

[8] Nallaperumal v. Krishna [1915] 29 M. L. J. 110, 30 I. C. 286.

[9] Imperial Bank v. Bengal National Bank [1931] C. 223, 58 Cal. 136, 34 C. W. N. 605, 53 C. L. J. 269—per Rankin C. J. This case has been reversed in the Privy Council, but not on this point; *vide* Imperial Bank v. Bengal National Bank [1931] P. C. 245, 58 I. A. 323, 35 C. W. N. 1035.

Employment of agent. Where a receiver appointed by the Court in a debenture-holder's action employs an agent to introduce a purchaser of property belonging to the company without leave of the Court, the agent, even if successful in finding a purchaser, is not entitled to any commission. The Court will however consider such a case on its merits, and in a proper case it is open to the Court to say that it is not equitable to take advantage of the agent's efforts without some compensation to him, the amount of such compensation to be entirely in the discretion of the Court 1.

Statements, Books and Accounts.

Books to be kept by company and penalty for not keeping proper books.

130. (1) *Every company shall cause to be kept proper books of account with respect to—*

(*a*) *all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place ;*

(*b*) *all sales and purchases of goods by the company ;*

(*c*) *the assets and liabilities of the company.*

(2) *The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be open to inspection by the directors during business hours.*

[(3) *Where a company has a branch office, the company shall be deemed to have complied with the provisions of sub-section* (1) *and sub-section* (2) *if proper books of account relating to the transactions effected at the branch office are kept at the branch office and proper summarised returns, made up to dates at intervals of not more than two months, are sent by the branch office to the registered office of the company or other place referred to in sub-section* (2).]

(4) *In the case of a company managed by a managing agent the managing agent, or where the managing agent is a firm or company, the partner or director of such firm or company and in any other case the director or directors who have knowingly by their act or omission been the cause of any default by the company in complying with the requirements of this section, shall in respect of such offence be liable to a fine not exceeding one thousand rupees.*

Amendment. This section is new and is on the lines of s. 122 of the English Act of 1929. It has been substituted for the original section 130 by the Companies (Amendment) Act, 1936. The original section 130 was as follows :—

Company to keep proper books of account.

130. Every company shall keep proper books of account in which shall be entered full, true and complete accounts of the affairs and transactions of the company.

By the amending Act II of 1938 sub-s (3) has been renumbered as sub-s. (4) and the new sub-s. (3) within square brackets has been inserted.

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1. National Flying Service Co. [1936] 154 L. T. 493.

Sub-s. (1) of this new section provides in detail how the books of account are to be kept. Sub-s. (2) says where the books of account are to be kept and provides for inspection by directors. The new sub-s. (3) deals with accounts of a branch office of the company. Sub-s. (4) lays down the consequences of default in complying with the requirements of the section.

Accounts.

The accounts of a company should be kept in a manner which prudent business people would adopt 1. A company is entitled to charge to capital account the interest on the borrowed money during the period of construction 1.

As to the evidentiary value of entries in books of a company, see s. 240 *post*.

Annual balance-sheet.

131. (1) *The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a balance-sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account since the incorporation of the company and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months or in the case of a company carrying on business or having interests outside British India by more than twelve months :*

Provided that the registrar may for any special reason extend the period by a period not exceeding three months.

(2) The balance-sheet *and the profit and loss account or income and expenditure account* shall be audited by the auditor of the company as hereinafter provided, and the auditor's report shall be attached thereto, or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(3) Every company other than a private company shall send a copy of *such balance-sheet and profit and loss account or income and expenditure account so audited together with a copy of the auditors' report* to the registered address of every member of the company at least *fourteen days* before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the members of the company during a period of at least *fourteen days* before that meeting.

Amendment.

By the Companies (Amendment) Act, 1936, the new sub-s. (1), on the lines of sub-s. (1) of s. 123 of the English Act of 1929, has been substituted for the original sub-s. (1), in sub-s. (2) the words in italics have been inserted, in sub-s. (3) for the words "such balance-sheet so audited" after the words "send a copy of", the words in italics have been substituted, and for the words "seven days" in two places the words

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1. Hinds v. Buenos Ayres &c. Co. [1906] W.N. 187, [1906] 2 Ch. 654.

"fourteen days" have been substituted. By the said amending Act sub-s. (4) has been omitted, as provision for penalty for default has been made in the new sub-s. (3) of s. 133. For the effect of these amendments see Introduction.

The original sub-s. (1) was as follows :—

Annual balance-sheet.

131. (1) Every company shall, once at least in every year and at intervals of not more than fifteen months, cause the accounts of the company to be balanced and a balance-sheet to be prepared.

The original sub-s. (4) was as follows :—

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one thousand rupees, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

As to what is a general meeting, see notes to s. 76.

A company is under a statutory duty to issue proper balance-sheet and the existence of some disputes regarding amounts due to the company does not relieve the company from such duty 1.

Scope of section.

When a company fails to get its accounts balanced and a balance-sheet prepared and to make a list of its members, it should be convicted under this section [now sub-s. (3) of s. 133] rather than under s. 134 (4). That the accounts had been called for by various criminal Courts in connection with other cases is no defence 2.

Internal reserve fund.

A provision in the articles of association that the directors may form an internal reserve fund on the terms that it need not be disclosed in the balance-sheet nor shall the auditors disclose the same to the shareholders, is *ultra vires* and inconsistent with the provisions of this section 3.

Auditor's certificate and liability.

As to the powers and duties of auditors, see s. 145 and notes thereto. The auditor will be liable for improper payments made by the directors and naturally resulting from his breach of duty 4. Where the auditor's certificate of the net profits of the company has been given on a wrong principle, it is not conclusive, and the Court is not bound by it 5 & Crichton's Oil Co., infra. Auditors signing the auditors' report in a false balance-sheet which is to the effect that in their opinion the balance-sheet is drawn up in conformity with law and exhibits a true and correct view of the company's affairs, wilfully makes a false statement in the report and are liable to prosecution under s. 282 6.

The opinion of an accountant or an auditor that a balance-sheet which does not disclose the true state of affairs of a company has been properly drawn up, is of no value and no opinion expressed by an auditor or accountant can turn a false balance-sheet into a true one 7.

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1. Punjab Flying Club Ltd. [1933] L. 301.
2. Ajit v. Emp. [1934] C. 63, 37 C.W.N. 1159.
3. Newton v. Birmingham Small Arms Co. [1906] 2 Ch. 378.
4. Spackman v. Evans [1868] L.R. 3 H.L. 171 at pp. 196 & 235.
5. Johnston v. Chestergate Hat Manfg. Co. [1915] 2 Ch. 338.
6. O. L. Karachi Bank v. Directors & others, Karachi Bank [1932] S. 4, 134 I. C. 993.
7. Superintendent & Remembrancer of Legal Affairs v. Akhil Bandhu [1936] C. 680 (685), 40 C. W. N. 1341.

Auditor's duties.

The duty of an auditor is to give information in direct and express terms [1], and not merely to arouse inquiry [2]. To insert a lump sum in a balance-sheet for goodwill, trade marks, machinery, furniture and fixtures without giving separate values for each class is not a compliance with the law [3]. For fuller notes see those to ss. 144 and 145 and reg. 108, Table A. For form of a balance-sheet see Form F of the Third Schedule.

Jurisdiction of Magistrate.

A Magistrate has jurisdiction to entertain a complaint against a director for failure to comply with the provisions of this section. But ordinarily a Magistrate should be chary of proceeding on a complaint of this kind except after reference to the registrar or on the complaint of a responsible person [4].

Registrar's complaint.

It was however held by the Punjab Chief Court that the registrar being the only person authorized by the Local Government under s. 220 (b) [s. 248 (2) of the present Act] of Act VI of 1882 for instituting and conducting all prosecutions under the Act, especially where the prosecutions were in connection with a breach of the rules relating to submission of the balance sheet and other periodical returns, a complaint for wilful default in filing a balance-sheet not brought by the registrar but by a clerk of his office and counter-signed by the Public Prosecutor was bad in law and not entertainable by a criminal Court [5]. But in a later case the same Court held otherwise [6], and so did the Nagpur Court [7].

Section made more comprehensive.

In the corresponding section (s. 74) of the Act of 1882 "every director and manager of the company" was liable; but this has been changed to "every officer" in this section which has thus been made more comprehensive [8].

Director's plea.

A person who acts as a director or manager cannot set up in answer to prosecution that he was not legally a director or manager. Every person who at any time during the default in complying with the provisions of this section acted as a director or manager is liable to be convicted [8].

If a person joins a board of directors of a bank and allows his name to be used as a bait to induce the public to deal with the bank, he must take the consequences if he does not exercise due care and attention in signing a false balance-sheet, and the fact that he did not attend the meetings of the board or had no knowledge of banking and accounts will not exonerate him from his liability, though he may be entitled to some sympathy on that account (see note 6, last page).

Where the balance-sheet is not made out and filed with the registrar in time, the chairman of the board of directors cannot escape liability on the ground that he depended upon the managing agents to take proper steps, and on several occasions asked them to do so [8]. In such a case the fact that one of the members of the firm who acted as managing agents was also punished in his individual capacity as a director is no reason for not punishing him as a member of the firm [8].

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[1] London & General Bank No. 2 [1895] 2 Ch. 673.
[2] Crichton's Oil Co. [1901] 2 Ch. 184, on appeal [1902] 2 Ch. 86.
[3] Galoway v. Schill, Seebohm & Co. [1912] 2 K. B. 354.
[4] Sidheswar Ghose v. Emp. [1911] 8 A.L.J. 1260, 12 I. C. 972.
[5] Emp. v. Shibdas [1910] 35 P.W.R. 1910 Cr.
[6] Totaram v. Emp. [1916] 34 I.C. 962, 14 P. R. 1916 Cr., 17 Cr. L. J. 242.
[7] Laxmi Narain v. Mahajan [1928] N. 186, 29 Cr. L. J, 581, 109 I.C. 597.
[8] Totaram v. Emp. [1916] 34 I.C. 962, 14 P.R. 1916 Cr., 17 Cr. L.J. 242.

Punishment provided for false return &c.

In addition to the penalties imposed in this section, if any person in any return, report, certificate, balance-sheet or other document required by or for the purposes of this Act wilfully makes a statement false in any material particular, knowing it to be false, he shall be liable to be punished with imprisonment for a term which may extend to three years and shall also be liable to fine [1].

Contents of balance-sheet.

A balance-sheet must not be a mere inventory, but must be in the nature of a pictorial representation of the trading position of the company, easily appreciated by persons reasonably able to understand commercial expressions and commercial conditions [2]. A banker in drawing up a balance-sheet is as much bound to disclose an overdraft as a loan. Consequently where there has been non-disclosure of an advance, it is immaterial whether it was a loan or an overdraft [2].

Overdraft.

Overdrafts are the usual accompaniments of current accounts. Overdrafts based on a deposit account is unknown [2].

Balance-sheet when fraudulent.

The balance-sheet of a company engaged in hazardous trade will not be considered delusive and fraudulent merely because an estimated value was put upon assets which were then in jeopardy and were subsequently lost or because the company was obliged to borrow money to pay the dividend provided the fact fairly appeared on the balance-sheet and the balance fairly represented profits [3].

Proviso. When the registrar condones the delay in holding a general meeting, the delay in filing the balance-sheet before the general body at their meeting must also be deemed to have been condoned [4].

Appeal.

Where the conviction is not of the managing director but of the company, an appeal by the former is incompetent. The appeal in such a case is not properly instituted unless it is by the company through some authorized agent [5].

Directors' report.

131A. (1) *The directors shall make out and attach to every balance-sheet a report with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the Reserve Fund, General Reserve or Reserve Account shown specifically on the balance-sheet or to a Reserve Fund, General Reserve or Reserve Account to be shown specifically in a subsequent balance-sheet.*

(2) *The report referred to in sub-section (1) may be signed by the chairman of the directors on behalf of the directors if authorised in that behalf by the directors.*

(3) *The provisions of sub-section (3) of section 130 shall apply*

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1. *Vide* s. 282.
2. Suptd. & Remembrancer of Legal Affairs v. Akhil Bandhu [1936] 40 C.W.N. 1341.
3. Stringer's case [1869] 4 Ch. App. 475.
4. In re Ramanujam [1941] M. 504, [1941] 1 M.L.J. 419, [1941] M.W.N. 225.
5. Ajit v. Emp. [1934] C. 63, 37 C. W. N. 1159.

to any person being a director who is knowingly and wilfully guilty of a default in complying with this section.

This section is new. It has been inserted by the Companies (Amendment) Act, 1936. It was suggested by sub-s. (2) of s. 123 of the English Act of 1929. For a discussion on this new provision and the amendments made in s. 131 see Introduction.

Sub-s. (3). By the amending Act II of 1938 sub-s. (3) of s. 130 has been re-numbered as sub-s. (4) and a new sub-s. (3) dealing with accounts of branch offices has been inserted. A consequential amendment in sub-s. (3) of the present section, that is, by substituting "sub-section (4)" for "sub-section (3)" ought to have been made. This is a curious oversight.

Contents of balance-sheet.

132. (1) The balance-sheet shall contain a summary of the property and assets and of the capital and liabilities of the company giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

(2) The balance-sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit.

(3) *The profit and loss account shall include particulars showing the total of the amount paid whether as fees, percentages or otherwise to the managing agent, if any, and the directors respectively as remuneration for their services and, where a special resolution passed by the members of the company so requires, to the manager, and the total of the amount written off for depreciation. If any director of the company is by virtue of the nomination, whether direct or indirect, of the company, a director of any other company, any remuneration or other emoluments received by him for his own use, whether as a director of, or otherwise in connection with the management of, that other company, shall be shown in a note at the foot of the account or in a statement attached thereto.*

Amendment.

By the Companies (Amendment) Act, 1936, the new sub-s. (3) has been inserted. It has introduced a provision requiring disclosure in the profit and loss account, now made compulsory under the amended s. 131, certain informations of importance to the shareholders.

A statement which lumped together assets valued on one principle with assets valued on another, and tangible with intangible assets, is not a compliance with the provisions of this section [1].

Book-debts.

All debts which are entered in the current books of the company should be included under the head of book-debts. A debt is none the less a debt, though there may be little prospect of its recovery and the company may have means of covering the deficit if it is not paid. It is always open to a company to write off debts that in its opinion are entirely irrecoverable; and on that being done such debts would cease to be "book-debts." Therefore all genuine book-debts must be covered by the entry against this item whether they are considered good, doubtful or bad debts, and the clear provision of the form F cannot be whittled down by general considerations as to the object of a balance-sheet 1.

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[1] Galloway v. Schill, Seebohm & Co. [1912] 2 K. B. 354.

Balance-sheet of banks.

Immediately after the decision in *Shamdasani v. Pochkanwalla* 1, the Governor General in Council made important exceptions with regard to the balance-sheets of banks by altering form F (*Sch. III*) under the power vested in him by s. 151. The effect of these alterations was that in the case of banks (1) provision for bad and doubtful debts was not requisite, (2) bad and doubtful debts were not required to be mentioned where provision for them had been made to the satisfaction of the auditors. Now for this form F the new form F has been substituted by the Companies (Amendment) Act, 1936 which should be carefully studied.

Secret reserve.

If any part of a secret reserve is availed of to meet bad and doubtful book-debts (it is doubtful whether any secret reserve fund is permissible) it must be revealed in the balance-sheet and not concealed 2.

As to profit and loss account, see notes to reg. 97, Table A.

Balance-sheet to include particulars as to subsidiary companies.

132A. *(1) Where a company, in this Act referred to as the holding company, holds shares, either directly or through a nominee, in a subsidiary company or in two or more subsidiary companies there shall be annexed to the balance-sheet of the holding company the last audited balance-sheet, profit and loss account and auditors' report of the subsidiary company or companies, and a statement signed by the persons by whom, in pursuance of section 133, the balance-sheet of the holding company is signed stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to what extent—*

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both, and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the company as disclosed in its accounts :

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner :

Provided further that for the purposes of this section an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities,

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1. Shamdasani v. Pochkanwalla [1927] B. 414, 29 Bom. L. R. 722. See also Queen-Empress v. Moss [1894] 16 All. 88.
2. Shamdasani v. Pochkanwalla (supra) per Fawcett J. See Stiebel's Company Law 2nd ed. p. 485 ; Palmer's Company Precedents, 12th ed. Part 1, p. 736.

shall not be deemed to be a holding company by reason only that part of its assets consists in 51 per cent. or more of the shares of another company.

(2) *If, in the case of a subsidiary company, the auditors' report on the balance-sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance-sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement, which is to be annexed as aforesaid to the balance-sheet of the holding company, shall contain particulars of the manner in which the report is qualified.*

(3) *For the purposes of this section the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.*

(4) *If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance-sheet shall so report in writing and their report shall be annexed to the balance-sheet in lieu of the statement.*

(5) *The holding company may by a resolution authorise representatives named in the resolution to inspect the books of account kept in accordance with section 130 by any subsidiary company, and on such resolution being passed those books of account shall be open to inspection by those representatives at any time during business hours.*

(6) *The rights conferred by section 138 upon members of a company may be exercised in respect of any subsidiary company by members of the holding company as if they were members of that subsidiary company.*

Amendment. This section is new. It has been inserted by the Companies (Amendment) Act, 1936. It is a reproduction, with certain modifications, of s. 126 of the English Companies Act of 1929. Compare that section with this section. For a discussion as to its effect see Introduction.

Authentication of balance-sheet.

133. (1) Save as provided by sub-section (2) the balance-*sheet and profit and loss account or income and expenditure account* shall—

(*i*) in the case of a banking company, be signed by the manager *or managing agent* (if any) and, where there are more than three directors of the company, by at least three of those directors and, where there are not more than three directors, by all the directors ;

(*ii*) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole director and by the manager *or managing agent* (if any) of the company.

(2) When the total number of directors of the company for the time being in British India is less than the number of directors whose signatures are required by sub-section (1), then the balance-sheet *and profit and loss account or income and expenditure account* shall be signed by all the directors for the time being in British India, or, if there is only one director for the time being in British India, by such director, but in such a case there shall be subjoined to the balance-sheet *and profit and loss account or income and expenditure account* a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section (1).

(3) *If any default is made in laying before the company or in issuing a balance-sheet and profit and loss account or income and expenditure account as required by section 131 or if any balance-sheet or profit and loss account or income and expenditure account is issued, circulated or published which does not comply with the requirements laid down by and under section 131, section 132, section 132A and this section, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to five hundred rupees.*

Amendment. By the Companies (Amendment) Act, 1936, the words in italics have been inserted in sub-sections (1) and (2) and the new sub-section (3) has been substituted for the original sub-section (3). The new sub-s. (3) is a comprehensive clause. See Introduction.

The original sub-s. (3) was as follows :—

(3) If any copy of a balance-sheet which has not been signed as required by this section is issued, circulated or published the company and every officer of the company who is knowingly a party to the default shall be punishable with fine which may extend to five hundred rupees.

Effect of signing. The mere signing a balance-sheet by a director does not make it an account stated involving a fresh promise by the director to pay the amount debited to him therein, inasmuch as a director signs the balance sheet not *animo contrahendi* but in performance of his duties as director [1]. Similarly balance-sheets including fees due to directors and signed by directors are not acknowledgments or written promises to pay those fees by the company 1.

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[1] John Shaw & Sons (Salford) Ltd. v. Shaw [1935] 2 K.B. 113 C.A.

Sub-s. (3). Persons who were never directors or officers of the company when the default occurred in preparing a balance-sheet and placing it before a general meeting cannot be held liable in respect of offences in not complying with the provisions of s. 131 2. The charge of non-filing of the balance-sheet receives a complete answer if the accused can show that the balance-sheet was not due ; it is altogether immaterial whether it has or has not been prepared 3.

Copy of balance-sheet to be forwarded to the registrar.

134. (1) *After the balance-sheet and profit and loss account* [*or the income and expenditure account as the case may be*] *have* been laid before the company at the general meeting [*three copies thereof*] signed by the manager or secretary of the company shall be filed with the registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of section 32.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the [*copies*] thereof required to be filed with the registrar.

(3) This section shall not apply to a private company.

(4) If a company makes default in complying with the requirements of this section, the company and evey officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty as is provided by section 32 for a default in complying with the provisions of that section.

Amendment.

By the Companies (Amendment) Act, 1936, in subs. (1) the words in italics in the beginning were substituted for the words "After the balance-sheet has", and the words "of the balance-sheet" were substituted for the word "thereof". By the amending Act II of 1938 in sub-s. (1) (i) after the words "profit and loss account" the words within the first square brackets have been inserted, (ii) for the words "a copy of the balance-sheet" the words within the second square brackets have been substituted, and in sub-s (2) for the word "copy" the word "copies" has been substituted.

The effect of the amendments is that now instead of one copy, three copies of the balance-sheet and profit and loss account or the income and expenditure account, as the case may be, signed by the manager or secretary are to be filed with the registrar.

In answer to a charge under sub-sec. (4) in respect of default made in filing the balance-sheet for a certain year, it is not open to a director to plead that as no

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1. Coliseum (Barrow) Ltd. [1936] 2 Ch. 44.
2. In re Narasimha Rao [1937] M. 341, 169 I.C. 100.
3. Lakshmana v. Emp. [1932] M. 497, 35 M. L. W. 661.

Plea in answer to charge under sub-s. (4).

general meeting was called in that year and no balance-sheet was laid before the company at any such meeting, it was impossible for him or the company to comply with the requirements of the section. But inorder to bring the case within the rule laid down in *Park* v. *Lawton* 1, a person whose defence to a charge under sub-s. (4) is that compliance on his part with the requirements of the section was impossible on account of no general meeting having been held, it is necessary in the first instance to show with reference to s. 76 that the accused officer of the company was knowingly a party to the default in holding the general meeting and when the question has not been enquired into at all the case has not been properly tried and the conviction will not stand 2.

The same persons cannot be charged in respect of the same years with offences punishable both under s. 131 and this section, because the section clearly contemplates the sending of a copy of balance-sheet only after it has been placed before the company at a general meeting under s. 131. Where in a case there is no placing of the balance-sheet before the company at a general meeting, the offence under this section cannot be committed 3.

The default under s. 32 and this section must be intentional and not merely inadvertent 4. See notes to s. 32(4).

Recovery of fine.

Where a fine is imposed upon a company under this section the fine must be recovered from the property of the company and cannot be recovered from the directors individually 5.

Jurisdiction.

The Presidency Magistrate in Calcutta possesses jurisdiction to try charges under this section even where the company is situate outside Calcutta, as the office of the registrar with whom the balance-sheet is to be filed is in Calcutta 6.

Right of member of company to copies of the balance-sheet and the auditor's report.

135. Save as otherwise provided in this Act, any member of a company shall be entitled to be furnished with copies of the balance-sheet *and the profit and loss account or the income and expenditure account* and the auditor's report at a charge not exceeding six annas for every hundred words or fractional part thereof.

The words in italics have been inserted by the Companies (Amendment) Act, 1936.

Statement to be published by Banking and certain other Companies.

Certain companies to publish statement in schedule.

136. (1) Every company being a limited banking company or an insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries

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1. [1911] 1 K.B. 588.
2. Raj Kumar v. King-Emp. [1917] 21 C.W.N. 840.
3. In re Narasimha [1937] M. 341, 169 I.C. 100.
4. Sunder Das v. Emperor [1929] L. 836, 10 Lah. 521. See also Public Prosecutor v. Lury & Co. [1941] 2 M. L. J. 487, [1941] M. W. N. 1109 and Surendra v. Emp. [1941] 45 C. W. N. 1130.
5. Dwarka Das v. Emp. [1924] L. 489, 26 Cr. L.J. 799, 86 I.C. 431.
6. Debendra v. Registrar [1917] 45 Cal. 490, 22 C.W.N. 96.

on business, make a statement in the form marked G in the Third Schedule, or as near thereto as circumstances will admit.

(2) A copy of the statement *together with a copy of the last audited balance-sheet laid before the members of the company* shall be displayed and, until the display of the next following statement, kept displayed in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding eight annas.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Indian Life Assurance Companies Act, 1912, or of the Provident Insurance Societies Act, 1912, as the case may be, as to the annual statements to be made by such company or society, apply with or without modifications, if the company or society complies with those provisions.

In sub-s. (2) the words in italics have been inserted by the Companies (Amendment) Act, 1936.

The omission of a limited banking company to publish the statements specified in sub-sec. (1) on the dates indicated in the section cannot be justified by the fact that the omission was due to a change in the closing date of the financial year of the company and that the officers of the company imagined in good faith that this justified a change in the dates on which the statements were required to be published [1].

Sub-s. (5). For the Indian Life Assurance Companies Act, 1912 and the Provident Insurance Societies Act, 1912 see now the Insurance Act IV of 1938.

Investigation by the Registrar.

Power of registrar to call for information or explanation.

137. (1) Where the registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish

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[1] In re Shamdashani [1924] B. 308, 26 Bom. L.R. 68.

in writing such information or explanation within such time as he may specify in his order.

(2) On the receipt of an order under sub-section (1), it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

(3) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty rupees in respect of each offence, *and the Court may on the application of the registrar and upon notice to the company make an order on the company for production of such documents as in its opinion may reasonably be required by the registrar for his investigation and allow the registrar inspection thereof on such terms and conditions as it thinks fit.*

(4) On receipt of such information or explanation the registrar may annex the same to the original document submitted to him; and any additional document so annexed by the registrar shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject.

(5) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the registrar shall report in writing the circumstances of the case to the [*Central Government*].

(6) *If it is represented to the registrar in materials placed before him by any contributory or creditor that the business of a company is carried on in fraud of its creditors or in fraud of persons dealing with the company or for a fraudulent purpose, he may after giving the company an opportunity of being heard by written order call on the company for information or explanation on matters specified in the order within such time as he may specify in the order and the provisions of sub-sections* (2), (3) *and* (5) *of this section shall apply to such order. If upon investigation the registrar is satisfied that any representation on which he has taken action under this sub-section is frivolous or vexatious, he shall disclose the identity of the informant to the company.*

(7) *The provisions of this section shall apply* mutatis-mutandis *to documents which a liquidator is required to file under this Act.*

Amendment. By the Companies (Amendment) Act, 1936, to sub-s. (3) the words in italics have been added. By the same Act the new sub-sections (6) and (7) have also been added. The first amendment provides for intervention by the Court to secure production of documents for the information of the registrar; the second amendment extends the powers of the registrar and also makes the section applicable to documents which a liquidator is required to file under the Act. See Introduction.

In sub-s. (5) the words "Central Government" have been substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937. But with effect from 1st April, 1938 the Central Government has entrusted to Provincial Governments their functions in this respect; *vide* Gazette of India dated 26th March, 1938, Part I, p. 440.

Scope.

The subject matter of this section is an investigation rather than a prosecution. Sub-s. (6) is confined to cases in which there are allegations of fraud and many prosecutions under the Act would be entirely outside it. The intention of the section is to facilitate the investigation of the affairs of the company and it has no reference to actual proceedings in Court [1]. It is not possible to read into this section any prohibition of private prosecutions [1].

Inspection and Audit.

Investigation of affairs of company by inspectors.

138. The [*Central Government*] may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the [*Central Government*] may direct—

(*i*) in the case of a banking company having a share capital, on the application of members holding not less then one-fifth of the shares issued;

(*ii*) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

(*iii*) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members;

(*iv*) in the case of any company, on a report by the registrar under section 137, sub-section (5).

In the corresponding section 135 of the English Act of 1929 the expression "Board of Trade" occurs in place of "Local Government."

In this section the words "Central Government" have been substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937. But with effect from 1st April, 1938 the Central Government has entrusted to Provincial Governments their functions in this respect; *vide* Gazette of India dated 26th March, 1938, Part I, p. 440.

Expenses of investigation.

The Local Government on a report from the registrar under s. 137 (5) took action under this section and appointed a certain person to investigate the affairs of a bank and passed an order directing that the expenses of the investigation amounting to Rs. 1000 should be paid by the bank. The Local Government itself paid the amount to the inspector and when subsequently the bank went into a voluntary liquidation, submitted its claim to the voluntary liquidator who registered it as a preferential claim. But the official liquidator appointed on compulsory winding up refused to recognize the claim as a preferential claim. The Lahore High Court held that the claim could not be recognized as a preferential claim [1].

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[1] Surendra v. Kalipada [1940] C. 232, 44 C. W. N. 454, [1940] 1 Cal. 575.

Inspector is entitled to assistance.

An inspector appointed under this section to investigate the affairs of a company is entitled to the assistance of any person whom he may reasonably require to be present at the investigation to enable him to prepare his report. An officer or agent of the company summoned to such an investigation is not entitled to refuse to answer questions put to him by the inspector on the ground that the latter has brought in a short-hand writer to take a note of the evidence, and if he so refuses, he is in the same position as a person who has committed a contempt of Court [2].

Application for inspection to be supported by evidence.

139. An application by members of a company under section 138 shall be supported by such evidence as the [*Central Government*] may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation ; and the [*Central Government*] may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

In this section the words "Central Government" have been substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937. But with effect from 1st April, 1938 the Central Government has entrusted to Provincial Governments their functions in this respect ; *vide* Gazette of India dated 26th March, 1938, Part I, p. 440.

Inspection of books and examination of officers.

140. (1) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

(2) An inspectot may examine on oath any such person in relation to its business, and may administer an oath accordingly.

(3) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

The High Court will not grant a prohibition against the holding of the examination under this section [3].

Sub-s. (3). Where the appointment of an inspector is invalid by reason of the provisions of para 8 (2), India and Burma (Transitory Provisions) Order, 1937, conviction

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1. Secretary of State v. Punjab Industrial Bank [1931] L. 351, 12 Lah. 678, 134 I. C. 200.
2. In re Gaumont British Picture Corpn. [1940] Ch. 506.
3. See Grosvenor &c. Hotel Co. [1897] 76 L. T. 337.

under this sub-section for refusal to produce books and documents before such inspector cannot be sustained 1.

Results of examination how dealt with.

141. (1) On the conclusion of the investigation, the inspectors shall report their opinion to the [*Central Government*], and a copy of the report shall be forwarded by the [*Central Government*] *to the registrar and another copy* to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

(2) The report shall be written or printed, as the [*Central Government*] directs.

(3) All expenses of, and incidental to, the investigation shall be defrayed by the applicants unless the [*Central Government*] directs the same to be paid by the company, which the [*Central Government*] is hereby authorised to do :

Provided that the expenses of and incidental to an investigation held in pursuance of clause (iv) of section 138 shall be paid out of the assets of the company and shall be recoverable as an arrear of land-revenue.

(4) *The registrar shall keep the copy of the report sent to him with the records of the company in his custody.*

Amendment.

By the Companies (Amendment) Act, 1936, the words in italics have been inserted in sub-s. (1), the proviso to sub-s. (3) has been added and the new sub-s. (4) has also been added. See Introduction. As to the words within square brackets see notes to the next section.

The report of the inspectors is not evidence of the matters contained in it ; it is evidence of their opinion. See s. 143 *post.*

As to the payment of expenses by the Local Government see notes to s. 138, *ante.*

Institution of prosecutions.

141A. (1) *If from any report made under section 138 it appears to the* [Central Government] *that any person has been guilty of any offence in relation to the company for which he is criminally liable, the* [Central Government] *shall refer the matter to the Advocate General or the Public Prosecutor.*

(2) *If the officer to whom the matter is referred considers that the case is one in which a prosecution ought to be instituted, he shall cause proceedings to be instituted, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.*

(3) *For the purposes of sub-section (2), the expression "agents" in relation to a company shall be deemed to include the bankers and*

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1. Karamuthu Thiagaraja [1939] M. 589.

legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(4) Any director, manager or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the leave of the Court be a director of or in any way whether directly or indirectly be concerned in or take part in the management of a company for a period of five years from the date of such conviction.

Amendment.

This section is new. It has been inserted by the Companies (Amendment) Act, 1936. It is based upon the provisions of s. 136 of the English Act of 1929, and provides a machinery for institution of proceedings against persons who have committed criminal offences in relation to a company. See Introduction.

In ss. 141 and 141A the words within square brackets have been substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937. But with effect from 1st April, 1938 the Central Government has entrusted its functions under these sections to Provincial Governments. *Vide* Gazette of India dated 26th March, 1938, Part I, p. 440.

Prosecutions by private individuals.

There is nothing in the actual terms of this section to justify an inference that the intention of the legislature was that prosecutions by private individuals should not be allowed. The section casts a duty on the Advocate General or the Public Prosecutor to cause proceedings to be instituted in certain circumstances. It also casts a duty upon the officers of the company to render assistance in connection with such prosecution. The terms of the section are quite different from those, for example, of ss. 196 and 198 of the Code of Criminal Procedure by which a bar is placed upon the jurisdiction of the Criminal Courts[1].

Power of company to appoint inspectors.

142. (1) A company may by a special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the [*Central Government*], except that, instead of reporting to the [*Central Government*], they shall report in such manner and to such persons as the company in general meeting may direct.

(3) All persons who are or have been officers of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the [*Central Government*].

In this section also the words within square brackets have been substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

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[1] Surendra v. Kalipada [1940] C. 232, 44 C. W. N. 454, [1940] 1 Cal. 575.

143. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Report of inspectors to be evidence.

144. (1) No person shall be appointed or act as an auditor of any company other than a private company *not being the subsidiary company of a public company* unless he holds a certificate from the [*Central Government*] entitling him to act as an auditor of companies :

Qualifications and appointment of auditors.

"Provided that a firm 'whereof all the partners practising in India' hold such certificates may be appointed by its firm-name to be auditor of a company, and may act in its firm-name."

"(2) The [*Central Government*] may, by notification in the [*Official Gazette*] and after previous publication, make rules providing for the grant, renewal or cancellation of such certificates and prescribing conditions and restrictions for such grant, renewal or cancellation :

Provided that nothing contained in such rules shall preclude any person from being granted a certificate merely by reason that he does not practise as a public accountant.

(2A) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(*a*) provide for the maintenance of a Register of Accountants entitled to apply for such certificates ;

(*b*) prescribe the qualifications for enrolment on the Register and the fees therefor ;

(c) provide for the examination of candidates for enrolment, and prescribe the fees to be paid by examinees ;

(*d*) prescribe the circumstances in which the name of any person may be removed from or restored to the Register ;

(*e*) provide for the establishment, constitution and procedure of an Indian Accountancy Board, consisting of persons representing the interests principally affected or having special knowledge of accountancy in India, to advise him on all matters of administration relating to accountancy, and to assist him in maintaining the standards of qualification and conduct of persons enrolled on the Register ; and (*f*) provide for the establishment, constitution and procedure of local accountancy borads at such centres as the [*Central Government*] may select, to advise him and the Indian Accountancy Board on any matter that may be referred to them.

(2*B*) The holder of a certificate granted under this section shall be entitled to be appointed and act as an auditor of companies throughout British India."

(3) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(4) If an appointment of an auditor is not made at an annual general meeting, the [*Central Government*] may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(5) The following persons : that is to say,

(*i*) a director or officer of the company ; and

(*ii*) a partner of such director or officer ; and

(*iii*) in the case of a company other than a private company *not being the subsidiary company of a public company* any person in the employment of such director or officer ; *and*

(*iv*) *any person indebted to the company,*

shall not be appointed auditors of the company *and if any person being appointed auditor becomes indebted to the company his appointment shall thereupon be terminated.*

(6) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general meeting, and the company shall send a copy of any such noticc to the retiring auditor, and shall give notice thereof to its members either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting :

Provided that, if after notice of the intention to nominate an auditor has been given to the company, an annual general meeting is called for a date fourteen days or less after the notice has been given, the requirements of this section as to time in respect of such a notice shall be deemed to have been satisfied, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this section, be sent or given at the same time as the notice of the annual general meeting.

(7) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.

(8) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.

(9) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

Amendments. By s. 2 of the amending Act No. XIX of 1930 the following amendments were made : (1) for the words "Local Government" in sub-s. (1) the words "Governor General in Council" were substituted ; (2) for the proviso in the same sub-section the new proviso was substituted ; and (3) for sub-s. (2) the new sub-sections (2), (2A) and (2B) were substituted. The words "whereof all the partners practising in India" in the new proviso to sub-section (1) were substituted by a further amending Act No. 1 of 1932 for the words "whereof the partners all" which occurred in the amending Act of 1930. The amendments made by Act XIX of 1930 came into force on 1st April, 1932, *vide* Notification dated 26th March, 1932, which appeared at p. 299, Part I, Gazette of India, 26 March, 1932. By the Companies (Amendment) Act, 1936, in sub-s. (1) the words in italics have been inserted, and in sub-s. (5) all the words in italics have also been inserted. In sub-s. (4) the words within square brackets have been substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) order, 1937, which came into operation on 1st April, 1937. But the Central Government has, with effect from 1st April 1938, entrusted to the Provincial Governments its functions under the above sub-section—*vide* Gazette of India dated 20th March, 1938, Part I, p. 440.

In sub-s. (1), sub-s. (2) and cl. (f) of sub-s. (2A) the words "Central Government" within square brackets have been substituted for the expression "Governor General in Council" and in sub-s. (2) the words "Official Gazette" within square brackets have been substituted for the words "Gazette of India", by the Government of India (Adaptation of Indian Laws) Order, 1937.

Auditor — whether an officer. An auditor may or may not be an "officer" of the company, and *prima facie* he is not except for the purposes of ss. 235. 236 and 237 1. In the undernoted case 2, the Allahabad High Court (Mears C. J. & Sen J.) considered the question in connection with a clause in the articles of a company which

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1. S. 2 (11).
2. Hudson v. Dehradun Musoorie Electric Tramway Co. [1929] A. 826 at pp. 829-30, 121 I. C. 693.

dealt with the conduct of the company's business and provided that officers of the company would be entitled to an indemnity out of the fund of the company except in regard to their own "wilful acts or defaults." After considering the following decisions[1], their Lordships observed: "The general result of the decisions is that where an auditor has been appointed by a limited liability company at a general meeting of the shareholders, he must be taken to be an officer of the company. It is not absolutely necessary that he should be mentioned as an officer in the articles of association. If things stood here, we might have felt considerable difficulty in holding the contrary. But we are confronted with the following facts : The term 'officer' had not been defined in Act VI of 1882, but in Connell's case[2] it had been held that an auditor was an officer of the company. There was a long train of reported Englishs decision in support of the same view. We find, however, that the legislature has introduced a statutory definition of the term 'officer' in s. 2, cl. (11), Act VII of 1913, which says that 'officer' includes any director, manager or secretary, but save in ss. 235, 236 and 237, does not include an auditor. We are bound by this statutory definition. In enacting Act VII of 1913 the legislature seems to have consciously departed from the view which had been taken in decided cases in the past so far as this country was concerned." "We hold therefore that an auditor cannot claim to be an officer within the purviews of Art. 118 of the Articles of Association"[3].

"Wilful acts or defaults."

As to the meaning of the expression "wilful acts or defaults" used in the above clause in the articles of the company (as in the articles of many companies), their Lordship observe[3] as follows : "The adjective 'wilful' in 'wilful acts or defaults' has evidently been used as a description and not a definition. The idea intended to be conveyed is that the default is occasioned by the exercise of volition or as the result of non-exercise of will due to supine indifference, although the defaulter knew or was in a position to know that loss or harm was likely to result. The word does not necessarily suggest the idea of moral turpitude. We have also to eliminate the elements of accident or inadvertence or honest error of judgment. The default must be the result of deliberation or intent or be the consequences of a reckless omission. 'Wilful default' therefore is indicative of some misconduct in the transaction of business or in the discharge of duty by omitting to do something either deliberately or by a reckless disregard of the fact whether the act or omission was or was not a breach of duty." Then their Lordships cite the cases noted below[4].

Duties of auditor.

The auditor must not certify what he does not believe to be true, and he must take reasonable care and skill before he believes that what he certifies is true, and that the books themselves show the company's true position. What is reasonable care must depend on the circumstances of each particular case[5]. An auditor however is not bound to be suspicious when there are no circumstances to arouse his suspicion. He is bound only to exercise a reasonable amount of care and skill[6].

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[1] London & General Bank No. 1 [1895] 2 Ch. 166 ; Kingston Cotton Mill Co. [1896] 2 Ch. 279, at pp. 284 & 288 ; Ibid [1896] 1 Ch. 6 ; Western Counties S. B. & Milling Co. [1897] 1 Ch. 617 ; Connel v. Himalaya Bank [1895] 18 All. 12 and City Equitable Fire Insurance Co. [1925] 1 Ch. 407.

[2] [1895] 18 All. 12. [3] Hudson v. Dehradun Mussoorie E. Tramway Co. (supra).

[4] Forder v. G. W. Ry. Co. [1905] 2 K. B. 532 ; Graham v. Belfast & N. C. Ry. Co. [1901] 2 I. R. 13 ; City Equitable Fire Insurance Co. (supra) ; Queen v. Senior [1899] 1 Q. B. 283 ; Queen v. Downes [1875] 1 Q. B. D. 25 and Lewis v. G. W. Ry Co. [1895] 3 Q. B. 206.

[5] London & General Bank No. 2 [1895] 2 Ch. 673.

[6] Kingston Cotton Mill Co. No. 2 [1896] 2 Ch. 279.

It is nothing to an auditor whether the business of the company is being conducted prudently or unprofitably or whether dividends are properly or improperly declared, provided he discharges his own duty which consists in examining the books of the company and satisfying himself that they show the true financial position of the company [1]. If he fails in his duty, he will be jointly and severally liable with those who are responsible for the management of the company, although he is not guilty of any dishonesty [1].

But although it is not the duty of the auditors to consider whether the business of the company is prudently or imprudently conducted, it is their duty to consider and report to the shareholders whether the balance-sheet exhibits a correct view of the company's affairs and the true financial position of the company at the time of the audit. They must ascertain this by examining the books of the company and must take reasonable care that what they certify as to the company's financial position is true, and except in very special cases it is their duty to place before the shareholders the necessary information and to indicate the means of acquiring it [2].

Removal of auditors.

There is no provision in the Act for removal of an auditor once appointed; but where the auditors have neglected their duties by which loss has occurred to the company, the Court will not compel the directors to allow the auditors to proceed with their audit [3].

Sub-s. (1), proviso. Under the old proviso the following had been declared as entitled to be appointed and to act as auditors: Members of—(1) the Institute of Chartered Accountants of England and Wales; (2) The Society of Incorporated Accountants and Auditors; (3) the Society of Accountants in Edinburgh; (4) the Institute of Accountants and Actuaries in Glasgow; (5) the Society of Accountants in Aberdeen and (6) the Institute of Chartered Accountants in Ireland [4].

Defence of auditor.

An irregularity in the appointment of an auditor may not avail him as a defence in a misfeasance proceeding [5].

Powers & duties of auditors.

145. (1) Evey auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessry for the performance of the duties of the auditors.

(2) The auditors shall make a report to the members of the company on the accounts examined by them, and on every balance-sheet *and profit and loss account* laid before the company in general meeting during their tenure of office, and the report shall state :—

(*a*) whether or not they have obtained all the information and explanations they have required ; and

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1. Union Bank, Allahabad [1925] A. 519, 47 All. 669, 23 A. L. J. 473.
2. London & General Bank No. 2 (supra).
3. See Republic of B. E. Syndicate [1914] 1 Ch. 139.
4. See Gazette of India, March 14, 1914.
5. Western C. B. Bakeries [1897] 1 Ch. 617 C. A.; see also London & General Bank [1895] 2 Ch. 673.

(b) *whether or not in their opinion the balance-sheet and the profit and loss account referred to in the report are drawn up in conformity with the law ; and*

(c) whether or not such balance-sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company ; *and*

(d) *whether in their opinion books of account have been kept by the company as required by section 130.*

(2A) *Where any of the matters referred to in clauses (a), (b), (c) and (d) of sub-section (2) is answered in the negative or with a qualification, the report shall state the reason for such answer.*

(3) In the case of a banking company, if the company has branch banks beyond the limits of India, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in British India.

(4) *The auditors of a company shall be entitled to receive notice of and to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and may make any statement or explanation they desire with respect to the accounts.*

(5) *If any auditors' report is made which does not comply with the requirements of this section, every auditor who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to one hundred rupees.*

Amendment. By the Companies (Amendment) Act, 1936, in sub-s. (2) the words in italics have been inserted, and sub-sections (2A), (4) and (5) have been added. For the effect of the amendments see Introduction.

Onus. Company auditors are bound to know or make themselves acquainted with the duties under the Companies Act for the time being in force and also under the company's articles of association 1. If the audited balance-sheet do not show the true financial condition of the company and damages are thereby caused, the onus is on the auditors to show that the damages are not the result of any breach of duty on their part 2.

Auditor's responsibility. Auditors are *prima facie* responsible for *ultra vires* payments made on the faith of their balance-sheet ; but whether and to what extent they are responsible for not discovering and calling attention to the illegality of payments made prior to the audit must depend on the special circumstances of each case.

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1. Kingston Cotton Mill No. 2 (supra) ; Republic of B. E. Syndicate (supra) at p. 171.
2. Cuff v. London & County &c. Co. [1912] 1 Ch. 440.

An auditor who commits a breach of duty may be sued by the company in an action or may be proceeded against under s. 235 ; but an auditor who is merely called in to audit the accounts *pro hoc vice* is not an officer 1. An auditor may set up the statute of limitation 2.

It was held in the undernoted case that an auditor is only bound to be reasonably cautious and careful and that it is not his duty to take stock 3. There are many matters in which the auditor must rely on the honesty and accuracy of others and he does not guarantee the discovery of fraud 3. Farwell, L. J. said that the business of an auditor "is to ascertain and state the true financial position of the company at the time of the audit and nothing more" 4.

Closing of accounts.

The auditing of a company's accounts does, in the absence of proof of fraud or mistake in connection with the audit, close the accounts as between the shareholders and the directorate ; but it does not preclude the company from calling upon its agents for rendition 5.

Auditor's report.

Sub-s. (2). The auditors' duty to make a report to the members is confined to forwarding their report to the secretary of the company leaving the secretary or the directors to perform the duties which the statute imposes of convening a general meeting to consider the report 6. It is not enough for the auditors merely to report that the balance-sheet does not exhibit a true view of the accounts. They must report generally on the state of the accounts : their duty is to call attention to what is wrong 7. Lord Lindley specified the duties of an auditor in a case 8, where the auditors and the directors were held to be jointly and severally liable to repay the amount of dividend improperly declared and paid.

Directors are not bound to supervise auditor's work.

Directors are entitled to presume that the auditors, like other officers of the company, are doing their duty and are not bound to supervise or test the auditors' work 9. Auditors are *prima facie* responsible for *ultra vires* payments made on the faith of their balance-sheet ; but whether and to what extent they are responsible for not discovering and calling attention to the illegality of payment depends on the special circumstances of each case 10.

Agents for shareholders.

Auditors are agents for the shareholders, but the latter are not necessarily bound by notice of every thing of which notice is given to the former 11.

Auditor's duty.

It is the duty of the auditor not to confine himself to verifying the arithmetical accuracy of the balance-sheet, but to inquire into its substantial accuracy and ascertain that it contained the particulars specified in the articles of association and was properly drawn up so as to contain a true and correct representation of the company's state of affairs 2. If improper payments by the directors

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1. Western C. B. Bakeries [1897] 1 Ch. 617 C. A.
2. Leeds Estate, Building &c. Co. v. Shepherd [1887] 36 Ch. D. 787.
3. City Equitable Fire Insurance Co. [1925] 1 Ch. 407.
4. City Equitable Fire Insurance Co. (supra).
5. Ramchand v. Imperial Oil &c. Co. [1917] 86 P. R., 42 I. C. 375.
6. Allen Craig & Co. (London) [1934] Ch. 483.
7. Newton v. Birmingham Small Arms Co. [1906] 2 Ch. 378.
8. London & General Bank [1895] 2 Ch. 673.
9. Dovey v. Cory [1901] A. C. 477.
10. Republic of B. E. Syndicate [1914] 1 Ch. 139.
11. Spackman v. Evans [1868] L. R. 3 H. L. 171 at pp. 196 & 235.

are the natural and immediate consequence of breach of duty on the part of the management and the auditors, they are liable in damages to the amount so paid 1.

Where payment of commission for placing shares is authorized by the memorandum of association and by a resolution of the directors and not by the articles, the auditors ought to point that out 2.

An auditor is not justified in omitting to make personal inspection of securities that are in the custody of a person or company with whom it is not proper that they should be left, whenever such personal inspection is practicable. A stock broker of a company, however respectable and responsible he may be, is not the proper person to have the custody of its securities except on such occasions when for short periods securities must of necessity be left with him ; but immediately such necessity ceases the securities should be lodged in the company's strong room or with its bank or placed in other proper and usual safe keeping 3.

Whenever an auditor discovers that securities of the company are not in proper custody, it is his duty to require that the matter be put right at once, or if his requirement is not complied with, to report the fact to the shareholders and this whether he can or cannot make a personal inspection 4.

The measure of the auditor's responsibility depends upon the terms of his engagement. There may be special contract defining duties and liabilities of the auditors. If there is such a contract, then that contract governs the question. The articles will however be looked at, if there is no special agreement, because the auditors will presumably have taken their duties upon the terms, *inter alia*, set out in the articles. That is not to say that the auditors can set aside a statutory obligation. No agreement or articles of association can remove an imperative or statutory duty 4.

This section does not lay down a rigid code. The duty imposed on auditors by it is not absolute but depends upon the information given and explanations furnished to them, so that there is abundant scope for discretion. The onus lies upon the auditors who would not be excused for total omission to comply with any of the requirements of the section, or for any consequences of deliberate or recklessly indifferent failure to ask for information on matters which call for further explanation 4.

Auditors should not be content with a certificate that securities are in the possession of a particular company, firm or person, unless the latter are trustworthy or respectable and further are such as in the ordinary course of business keep securities for their customers. In all these cases the auditors must use their judgment. Whether an auditor did in fact entertain the opinion he reported is a question of fact 4.

What is not.

It is not the duty of auditors to make themselves familiar with the obligations imposed upon them by the company's articles 5. An article exempting auditors from liability for losses not happening by or through their own wilful neglect or default is valid and effective 5. But if any loss arises to the company from neglect of duty on the part of the auditors, they may be held personally liable 6.

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1. Leeds Estate, Building &c. Co. v. Shepherd [1887] 36 Ch. D. 787; London & General Bank [1895] 2 Ch. 673, 682, 692 ; Kingston Cotton Mill Co (supra).
2. Republic of B. E. Syndicate [1914] 1 Ch. 139.
3. City Equitable Fire Insurance Co. [1925] 1 Ch. 407.
4. City Equitable Fire Insurance Co. (supra).
5. Kingston Cotton Mill No. 2 (supra). But see the new s. 86 C.
6. Leeds Estate, Building &c. Co. (supra) ; London & General Bank (supra).

Although it is not the duty of accountants to take stock in auditing the accounts, they may well call for explanations of particular items in the stock-sheet [1].

As to the duties and liabilities of auditors generally see the cases noted below [2].

Articles where ultra vires.

A company has no power to make regulations precluding its auditors from availing themselves of all the information to which they are entitled as material for their report to be made to the shareholders as to the true state of the company's affairs. If the company does so, the regulations are *ultra vires* [3].

An auditor will be ordered to deliver up books and papers to the liquidator without prejudice to his lien [4].

Rights of preference shareholders, etc., as to receipt and inspection of reports, etc.

146. (1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance-sheets *and profit and loss accounts* of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company, nor to a company registered before the commencement of this Act :

Provided that in the case of any public company whether registered before or after the commencement of this Act the trustees for holders of debentures shall have the right conferred by sub-section (1) on holders of preference shares and debentures of a company.

Amendment.

By the Companies (Amendment) Act, 1936, in sub-s. (1) the words in italics have been inserted and the proviso to sub-s. (2) has been added. For the effect of the amendments see Introduction.

Carrying on business with less than the legal minimum of members.

Liability for carrying on business with fewer than seven or, in the case of a private company, two members.

147. If at any time the number of members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joinder in the suit of any other member.

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1. Mead v. Ball Baker & Co. [1912] 28 T.L.R. 81 C.A.
2. City Equitable Fire Insurance Co. (supra) ; Republic of B. E. Syndicate [1914] 1 Ch. 139.
3. Newton v. Birmingham Small Arms Co. [1906] 2 Ch. 378.
4. Findlay v. Waddel [1910] S.C. 670.

If the number of members is reduced below the requisite number, the company may also be wound up by the Court 1.

The representatives of a deceased or bankrupt member and past members should not be counted in estimating the number of members 2.

Service and Authentication of Documents.

Service of documents on company.

148. A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

Service of notice &c.

A notice or order of Court, if served on the directors at the registered office of the company is good service, provided that it is addressed to the company and not to the directors 3.

Summons how served.

A summons to appear before a Magistrate can be served in the way provided in this section 4. A foreign corporation carrying on business in England 5, even for a short time, is liable to be sued in an English Court and may be served in the same manner as an English company 6.

Service of documents on registrar.

149. A document may be served on the registrar by sending it to him by post, or delivering it to him, or by leaving it for him at his office.

This section does not occur in the English Act.

Authentication of documents.

150. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

Tables, Forms and Rules as to prescribed matters.

Application and alteration of tables and forms, and power to make rules as to prescribed matters.

151. (1) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The [*Central Government*] may alter any of the tables and forms in the First Schedule, so that [*it*] does not increase the amount of fees payable to the registrar in the said Schedule mentioned, and may alter or add to the forms in the Third Schedule.

(3) Any such table or form, when altered, shall be published in the [*Official Gazette*], and on such publication shall have effect as if enacted in this Act, but no alteration made by the [*Central Government*] in Table A in the First Schedule

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1. S. 162, cl. (iv).
2. *Vide* Bowling & Welby's Contract [1895] 1 Ch. 663.
3. Benabo v. William Jay & Partners, Ltd. [1941] 1 Ch. 52.
4. Pearks, Gunston & Tee v. Richardson [1902] 1 K. B. 91.
5. As to what amounts to carrying on business in England see cases cited in Buckley, 10th ed. p. 276 note (i).
6. Buckley, 10th ed. p. 276 & cases cited there.

shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

(4) In addition to the powers hereinbefore conferred by this section, the [*Central Government*] may make rules providing for all or any matters which by this Act are to be prescribed by [*its*] authority.

(5) Every such rule shall be published in the [*Official Gazette*], and on such publication shall have effect as if enacted in this Act.

In this section the words "Central Government" within square brackets in sub-ss. (2), (3) and (4) have been substituted for the words "Governor General in Council" and the words "Official Gazette" within square brackets in sub-ss. (3) and (5) have been substituted for the words "Gazette of India", and "*its*" in two places for "his" by the Government of India (Adaptation of Indian Laws) Order, 1937.

The forms given in the Third Schedule should be generally followed 1.

Vide India Gazette of 17th January, 1914.

Arbitration and Compromise.

Power for companies to refer matters to arbitration.

152. (1) A company may by written agreement refer to arbitration, in accordance with the···Arbitration Act, 1940, an existing or future difference between itself and any other company or person.

(2) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(3) The provisions of the···Arbitration Act, 1940,···shall apply to all arbitrations between companies and persons in pursuance of this Act.

Amendment.

In sub-sections (1) and (3) after the words "Arbitration Act" for the figure "1899" the figure "1940" has been substituted by s. 49 (2) of the Arbitration Act X of 1940. By the same section of the said Act in sub-s (3) before the words "shall apply" the following words have been omitted : "other than those restricting the application of the Act in respect of the subject-matter of the arbitration." By the Repealing and Amending Act XXXII of 1940 in sub-sections (1) and (3) the word "Indian" before the words "Arbitration Act" has been omitted.

Object.

This section is merely an enabling section 2. The real object of this section is to extend the operation of the Arbitration Act even to cases in which the subject-matter of disputes could not be made subject of arbitration under the Arbitration Act 2. This section is subject to the applicability of the

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1. Cotman v. Brougham [1918] A. C. 514 at p. 522.
2. Sundar Mal v. Paris Business Co-operation Ltd. [1931] L. 555, 132 I. C. 399 ; Sitaram v. Punjab National Bank [1936] L. 721 F. B., 17 Lah. 722.

Arbitration Act to the local area in which the Court in which the suit has been instituted is situate 1. Where the Arbitration Act has not been made applicable, as for instance, the Ferozepore District in the Punjab, a Civil Court cannot proceed with a reference to arbitration under that Act. It is not the intention of the legislature to make the Arbitration Act applicable to the whole of British India with regard to disputes between companies or between a company and other persons 1.

Construction.

The word "may" after the words "a company" in the beginning of this section does not go with the sentence "in accordance" &c. but with the words "refer to arbitration." Again the existence of the words "in accordance" &c. in sub-s. (1) is an indication that the legislature considered it to be *de rigueur* that every reference by a limited company to arbitration should be in accordance with the Arbitration Act. Sub-s (3) is conclusive on the point that the provisions of the Arbitration Act only apply to arbitrations to which a limited company is a party. Such companies cannot refer to arbitration independent of this provision of the law and Schedule II of the Code of Civil Procedure has no application 2. This view has also been taken by the Calcutta High Court (R. C. Mitter & Lodge JJ.) in a very recent case 3, dissenting from the view taken by a Full Bench of the Lahore High Court in *Sita Ram v. Punjab National Bank*, supra. Their Lordships of the Calcutta High Court in the case 3 referred to above said : "The concluding words of that sub-section [sub-s. (3) of s. 152 of the Companies Act] 'in pursuance of this Act', words which had troubled the minds of the Judges constituting the Full Bench of the Lahore High Court (*in Sita Ram v. Punjab National Bank,* supra)--mean that sections 3 to 22 of the Indian Arbitration Act, 1899 would apply to all arbitrations in which one or both of the parties are companies irrespective of the *locus* of the subject matter *by the force and effect of the Indian Companies Act*, and the procedure provided for in the Indian Arbitration Act for extending its field of operation would not have to be followed in such cases. This is in our judgment the effect of sub-sec. (3) of s. 152. The words 'in pursuance of this Act' (*i.e.*, the Companies Act) clearly qualify the phrase 'shall apply'. The meaning is that the provisions of the Indian Arbitration Act, 1899, except s. 2 thereof (which is to be treated as non-existent) shall apply to all arbitrations between companies and persons by the force and effect of the Companies Act itself. The decision of the Full Bench of the Lahore High Court has the effect of substituting for the words 'in pursuance of this Act' used by the legislature the words 'in pursuance of sub-sec. (1)' or the words 'in pursuance of this section.' On the interpretation we have put upon sub-sec. (3) of s. 152, sec. 3 and sec. 4(a) of the Indian Arbitration Act, 1899 would apply to all arbitrations in which a company is a party." An award made in such an arbitration must be filed either in the High Court or the Court of the District Judge, as the case may be, and paras 20 and 21 of Schedule II to the Code of Civil Procedure are excluded from operation upon such arbitration 3. When an application to file an award is made to the wrong Court it should not be dismissed but returned for presentation to the proper Court 3.

The Arbitration Act applied in the case falling within the scope of that Act even when the *locus* of the subject matter was outside a Presidency town, provided one of the parties or both of them were companies registered under this Act. Consequently a reference

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1. Sundar Mal v. Paris Busines Co-operation Ltd. [1931] L. 555, 132 I. C. 399; Sitaram v. Punjab National Bank [1936] L. 721 F. B., 17 Lah. 722.
2. Peoples Bank of N. India v. Padam Lal [1938] 177 I. C. 659.
3. Jhirighat Native Tea Co. v. B. Gupta [1940] 44 C. W. N. 285, [1940] 1 Cal. 558, [1940] C. 220.

Applicability.

to arbitration, in which a company was interested, with the intervention of the Court was governed by the rules in Sch. 2 of the Code of Civil Procedure. The Arbitration Act, 1899 had no application to such a case [1]. But since 1st July, 1940 on which the Arbitration Act, 1940 came into force, such cases would be governed by Chapter IV of that Act. The Arbitration Act applied to all references to arbitration under the Companies Act [2], wherever they took place within a Presidency town or in a place to which the Local Government had extended the provisions of theArbitration Act, 1899 by virtue of the proviso to s. 2 of that Act [3]. This section applies to those cases only in which a company by written agreement refers a matter in dispute to arbitration in accordance with the provisions of the Arbitration Act. It does not apply to a case where a reference is made by the Court in a pending suit [4]. A company under the Companies Act stands in the Punjab on no different footing than a private individual governed by the Punjab Act I of 1911. Therefore if an agreement between the parties of which one is a company makes no specific reference to the Arbitration Act, that Act will not apply to the arbitration agreement between the parties [5].

It is not obligatory that any references to arbitration to which a limited company is a party should be made under the Arbitration Act [6].

Arbitrations under this & s. 208-C, distinction.

This section empowers a company to refer to arbitration an existing difference between itself and any other company or person. But a shareholder has no such right against the company [7]. The arbitration contemplated in s. 208-C (*post*) is one between the company in liquidation and one or more of its members—an arbitration to settle an internal dispute or difference. Sub-s. (3) of the present section would not cover such a case, as the arbitration contemplated there is one between a company and either another company or an individual third party, *i.e.*, an arbitration to settle not an internal but an external dispute or difference [8].

Decree if nullity.

Where the parties referred a dispute to arbitration but had not agreed to do so in writing, an award was made therein and the Court passed a decree in terms of the award, it was held that the decree was not a nullity and it was not open to the executing Court to go behind the decree [9]. Where a company entered into an agreement for reference to arbitration, but it was not specifically stipulated that it was to be under the Arbitration Act, and the award was filed and a decree passed thereon, it was held that the decree was a nullity and could not be executed [10]. But the award itself was enforceable as a decree under s. 15 of the Arbitration Act [10]. In the last cited case the Peshwar Court followed the decision of Mukherji and Guha JJ. in *Rabindra* v. *Jnanendra* [11] affirmed by the Judicial Committee

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[1] East Bengal Bank v. Jogesh [1941] C. 127, 44 C. W. N. 828, [1940] 2 Cal. 237.

[2] Kewal Krishan v. Punjab National Bank [1934] Pesh. 107, 151 I.C. 860 ; Grahams Trading Co. v. Chandulal [1935] S. 228, 159 I. C. 824 ; Peoples Bank of N. India v. Padam Lal (supra) ; Jhirighat Native Tea Co. v. B. Gupta (supra).

[3] Behari v. Sirsa Trading Co. [1933] L. 44, 141 I. C. 64 ; Ruplal v. Dhansar Coal Co. [1932] 136 I. C. 445.

[4] Punjab & Kashmir Bank v. Damodri [1936] L. 257.

[5] Chandu Lal v. Grahams Trading Co. [1938] L. 827.

[6] Lyallpur Bank v. Jai Gopal [1940] L. 97, 190 I. C. 146 following Balmukand v. Punjab National Bank [1936] L. 721, 17 Lah. 722 F.B.

[7] Madura Mills Co. v. Krishna Ayyar [1937] M. 405, 171 I. C. 690.

[8] Jhirighat Native Tea Co. v. B. Gupta, (supra).

[9] Roshan Lal v. Punjab National Bank [1933] L. 46, 140 I. C. 180.

[10] Punjab National Bank v. Kewal Krishna [1933] Pesh. 66, 143 I. C. 435 ; see also Peoples Bank of N. India v. Padam Lal (supra).

[11] [1932] 35 C.W.N. 538, 58 Cal. 1018.

(see *Jnanendra* v. *Rabindra* 1) with these words : "Their Lordships agree with the view taken by the Courts in India that the decree......was passed without jurisdiction and was, therefore, incapable of execution as such. The respondent, however, as a party to the arbitration award would be entitled under the Act to enforce the arbitrator's award through the Court in exactly the same way as if it was a decree. If, therefore, there was an existing award in favour of the respondent, the objection to his application was one of form only and not of substance."

A contract to refer to arbitration any dispute which might arise between a company and an individual is not illegal because it is not under the seal of the company 2. Although a living company is allowed to refer matters in difference to arbitration, an official liquidator may not be allowed to make a reference to private arbitration 3.

Reference to arbitration.

Where an agreement is made with a company to refer to arbitration under certain contingencies, a Court has no jurisdiction to file the agreement as s. 3 of the Arbitration Act excludes Sch. II, para 17, C. P. C. from operation of the Act 4. Where the articles of association provide for arbitration of a dispute between the company and its members, the latter can validly refer to arbitration a dispute relating to the question whether he was a member of the company in respect of some further shares for which he was registered as a member 5.

Enforcement of award.

An award under the Arbitration Act, 1899 can only be enforced by the District Judge and cannot be transferred by him to any other Court except the District Judge 6. But it is not obligatory on a company governed by the Arbitration Act to make a reference to arbitration out of Court in the province of the Punjab only in pursuance of the provisions of the Arbitration Act and to file an award made on such reference in the Court of the District Judge as required by the Arbitration Act. It is permissible for the company, although governed by the Arbitration Act, to make a reference outside the Arbitration Act, and although the award on such reference is filed in the Court of the senior Subordinate Judge, the decree passed on its basis is perfectly legal 7.

Appeal.

The proceedings for enforcemnt of an award under s. 15 of the Arbitration Act are governed by s. 47, C. P. C. and an appeal is competent from an order rejecting such application. The fact of an objection being raised that the award was given without jurisdiction does not preclude the application of s. 47, C. P. C. 8.

Power to compromise with creditors and members.

153. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company

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1. [1933] P. C. 61.
2. Ganges Sugar Works v. Nuri Miah [1915] 37 All. 273, 13 A.L.J. 312.
3. Dehra Dun Mussooree Tramways Co. [1928] A. 553, 26 A. L. J. 810, 50 All. 867.
4. Attock Oil Co. v. Abdul Majid [1929] L. 246, 118 I. C. 533 ; But see Sita Ram v. Punjab National Bank, supra.
5. Kanhaiya Lal v. People's Bank of N. India [1934] L. 49.
6. Kewal Krishna v. Punjab National Bank [1934] Pesh. 107, 151 I.C. 860 ; Grahams Trading Co. v. Chandulal [1935] S. 228, 159 I. C. 824 ; Peoples Bank of N. India v. Padam Lal (supra) ; Jhirighat Native Tea Co. v. B. Gupta (supra).
7. Sitaram v. Punjab National Bank (supra). But see Jhirighat Native Tea Co. v. B. Gupta (supra).
8. Kanhaiya Lal v. People's Bank of N. India [1934] L. 49.

being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on all the members or class of members, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under sub-section (2) shall have no effect until a certified copy of the order has been filed with the registrar, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with sub-section (3) the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against a company on such terms as it thinks fit and proper until the application is finally disposed of.

(6) In this section the expression "company" means any company liable to be wound up under this Act *and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.*

(7) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorised to hear appeals from the decisions of the Court.

Amendment. By the Companies (Amendment) Act, 1936, the original sub-s. (3) has been re-numbered as sub-s. (6) and the new sub-sections (3), (4) and (5) have been inserted. By the same Act to sub-s. (3) re-numbered as sub-s. (6) the words in italics have been added and a further sub-s. (7) has also been added. As to the effects of these amendments see Introduction.

Construction. This section should be carefully construed. "It makes the majority of the creditors", as observed by Lord Justice Bowen, "or class of creditors bind the minority, it exercises a most formidable compulsion upon dissentient creditors; and it therefore requires to be construed with care as not to place in the hands of some of the creditors the means and opportunity of forcing dissentients to do that which it is unreasonable to require them to do, or of making a mere jest of the interest of the minority"[1]. But in *English &c. Bank*[2] Vaughan Williams J. said: "I do not think that any one who has followed the subsequent decisions—whether under the Companies Acts or the Bankruptcy Acts—will hesitate to say that the tendency of late has been rather to favour the power of the majority of creditors to impose their will upon the minority and to construe the legislation upon the subject with some freedom."

Principle. The principle upon which this section is based has been laid down in a recent case[3], by Page C. J. and Cunliffe J. of the Rangoon High Court. It is true that as between a creditor and the company as his debtor, the creditor who proves insolvency is entitled *ex debito justitiæ* to a winding up order. But the right *ex debito justitiæ* is not his individual right, but his representative right. If the majority of the class are opposed to his view and consider that they have a better chance of getting payment by abstaining from seizing the assets, then upon general grounds, the Court should give effect to such right as the majority of the class desire to exercise[4].

Powers of the Court under this section are strictly limited. The Court may either sanction or refuse to sanction a scheme approved by the company and its creditors or members. The Court has no power upon an application to alter the scheme which has been sanctioned by the Court and agreed to at a meeting under this section without giving parties to an agreement an opportunity of considering the scheme in the way the Court proposes[5]. Upon confirmation by the Court the scheme becomes by virtue of this section binding upon the creditors, shareholders and the company. Its terms can therefore be varied by order of the Court after the variation has been approved at meetings of the creditors and shareholders, and it is not possible for the company or its directors or shareholders, whether by resolution or ratification or otherwise, to alter the scheme. Nor is it possible for the company or its directors to vary the scheme under the guise of a compromise with a shareholder, as no variation or departure from that scheme can be validated by mere acquiescence of the shareholders or creditors[6]. It is not the function of the Court to substitute its own scheme for the scheme presented to it for sanction, and if the Court is of opinion that unless some radical amendment is effected or the scheme is fundamentally altered, it ought not to be sanctioned, it is the duty of the Court to reject the scheme. "The Court must look at the scheme and see whether the Act has been complied with, whether the majority are acting *bona fide* and whether they are coercing the minority inorder to promote interests adverse to those of the class whom they purport to represent, and then see whether the scheme is a reasonable one, or whether there is any reasonable objection

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1. Sovereign Life Assurance Co. v. Dodd [1892] 2 Q. B. 573.
2. [1893] 3 Ch. 385 (396); see also Katni Cement & Industrial Co. [1937] B. 423.
3. Robson v. Dawson's Bank [1932] R. 75, 10 Rang. 143.
4. Robson v. Dawson's Bank [1932] R. 75, 10 Rang. 143.
5. Natore Kamala Bank [1937] C. 124, [1937] 1 Cal. 368: Mymensingh Loan Office [1937] C. 667.
6. Premila Devi v. Peoples Bank of N. India [1938] P. C. 284 (288-89), 43 C. W. N. 205, 178 I. C. 659.

Court's powers & duties.

to it, or such an objection to it as that any reasonable man might say that he could not approve of it" [per Lindley L. J. in *English Scottish &c. Bank* (1893) 3 Ch. 385]. The Court must be satisfied that the scheme is not only reasonable but also practicable. It is neither the duty nor the business of the members of the Court to express their own opinion as to whether, if they happened to be creditors of the bank, they could not or would not have voted in favour of the scheme. It is enough that the Court should hold that the view taken by the creditors as to the feasibility of the scheme is one as to which persons acting honestly and viewing the scheme laid before them in the interests of those whom they represent take a view which can be reasonably taken by business men [1]. The fact that the shareholders and creditors have approved of a scheme of compromise or arrangement does not mean that the Court is bound to accept the scheme. It is the duty of the Court to examine the proposals and decide whether they are fair and reasonable. That the shareholders and cerditors have approved of a scheme will of course carry weight but there may be more important considerations [2]. Where the resolution approving a scheme is shown to have been passed as a result of misleading statements contained in a letter written by one of the creditors of the company who was also a director thereof, and circulated to all the shareholders and creditors before the meeting, where the company was hopelessly insolvent and the scheme conferred no apparent benefit on any one and in fact ignored creditors who were not depositors and the scheme itself was not a feasible one, and where besides there were also allegations of unlawful and unauthorized acts on the part of the company's officials, justice demanded that the resolution approving the scheme should be disregarded [2]. Before sanctioning the scheme the Court may impose certain conditions upon the company for making some provision for the dissentients. The Court however does not necessarily make any provision for the dissentients, if it is satisfied that the scheme is reasonable and fair and in the interest of the general body of shareholders. In any case under modern practice such a provision is not a *sine qua non* to sanctioning the scheme if it is reasonable [3].

The first thing the Court has to see is whether the provisions of the statute have been complied with. Secondly, the Court has to see that the persons present at the meetings have acted *bona fide* and that they have done nothing which in the circumstances is injurious to the interests of the classes whom they represented. But the Court does not sit merely to register the decree of the majority of the creditors or shareholders present at the meetings. It has to look at the arrangement and see that it is such that a man of business would reasonably approve, and further that it is fair and reasonable as regards the interests of all concerned [4]. "If the creditors are acting on sufficient information and with time to consider what they are about and are acting honestly, they are, I apprehend, much better judges of what is their commercial advantage than the Court can be... While therefore I protest that we are not to register their decisions but to see that they have been properly convened and have been properly consulted and have considered the matter from a point of view, that is, with a view to the interests of the class to which they belong and are empowered to bind, the Court ought to be slow to differ from them." [1] Therefore it is very essential that the scheme must, as far as possible, be based upon correct information, but that does not mean that if the information is not accurate and complete the application for sanction should be rejected *in limine*. The Court can in such a case call for a report, in as short a time as possible, which will give a fair idea of the affairs of the company at the moment and on that state of information the scheme as adumbrated or with the necessary amendments can be circulated along with the report [2]. As regards the capacity of creditors to safeguard their own interests in such cases the following observations of Vaughan Williams J. apply with greater force to this country : "I confess that I have very little belief in creditors of a company being able to look after their own interests. It is a matter of history that never mind what safeguards may be suggested, never mind what statutory precautions may be given, the creditors of an individual bankrupt have never been roused to look after their interest... Experience shows that creditors, whether of a company or of an individual man, never can be trusted to take care of themselves. The disjected forces of individual creditors are a mere nothing as against the consolidated forces of those who are often deeply interested in bringing about an adoption of the scheme which is presented to the creditors" [3]. In all concerns of the company, whether in the matter of winding up or in the matter of a scheme, the policy of the Act is to ascertain the wishes of the creditors as expressed by the majority of them subject to the rights of the minority being safeguarded. No Court is entitled to say that it will not ascertain the wishes of the majority in regard to a proposed scheme. It is true that under sub-s. (1) of this section a certain discretion is vested in the Court, but the scope of that discretion is limited, and the Court ought not to decline to order a meeting unless the proposals are illegal as being in contravention of the provisions of the Act or incapable of modification in view of ascertained facts, so that it would be a waste of time and expenditure to circulate them [2].

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[1] Per Page C. J. in Dawson v. Hormusji [1932] R. 54, 10 Rang. 438. See also Katni Cement & Industrial Co. [1937] B. 423.

[2] Calicut Bank v. Devani Ammal [1940] M. 621, [1940] M. W. N. 252, 51 M. L. W. 639.

[3] Katni Cement & Industrial Co. (supra).

[4] Peoples Bank [1933] L. 51, 140 I. C. 128 ; see also Alabama &c. Ry. Co. [1891] 1 Ch. 213, per Lindley J. ; Serajganj Loan Office v. Nilkanta [1935] C. 777, 39 C.W.N. 1199 ; India Flour Mills, Ltd. [1934] S. 54, 149 I.C. 51 ; Anglo-Continental Supply Co. [1922] 2 Ch. 723 ; Dorman,Long & Co. [1934] Ch. 634 ; Tata Iron & Steel Co. [1928] B. 80 (90), 30 Bom. L. R. 197, 108 I. C. 30.

The Court should always prefer a living scheme to a compulsory liquidation bringing about the end of a company and usually without any hope of payment in full (*Dawson v. Hormusji*, supra). The onus of showing that any scheme is unreasonable is on the objectors [4]. It is the Court's duty carefully to scrutinize complicated schemes [5].

Winding up.

This section is applicable in the case of a going company as well as a company in liquidation, whereas s. 215 applies only in or in view of winding up of a company [6]. Where after a petition has been presented under this section, an application for compulsory winding up is filed by certain creditors, there is no reason why the latter application should not be considered by the Court. In fact it should be considered at the earliest possible moment. Even if an order for winding up is passed, it will not interfere with any proper scheme being considered [7]. "Schemes are presented to the creditors", said Vaughan Williams J. "in bankruptcy and in the liquidation of companies more often than not for the purpose of rectifying some wrong that has been done or for the purpose of serving some interest which is wholly antagonistic to the interests of the creditors" 1.

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[1] English, Scottish & Australian Chartered Bank [1893] 3 Ch. 385, per Lindley L. J. at p. 409 ; see also Travancore National &c. Bank [1939] M. 318.

[2] Travancore National &c. Bank [1939] M. 318.

[3] English, Scottish & Australian Chartered Bank [1893] 3 Ch. 385, per Vaughan Williams J. at. p. 396.

[4] Per Cunliffe J. in Dawson v. Hormusji (supra).

[5] Dorman Long & Co. [1934] Ch. 635.

[6] Katni Cement & Industrial Co. (infra) ; Travancore National &c. Bank [1939] M. 318.

[7] Calicut Bank [1939] M. 58, [1938] 2 M. L. J. 812.

All reorganization may be effected.

All modes of reorganizing the share capital, even when involving an interference with preference or other special rights attached to shares, can be effected as part of an arrangement with the members under this section 2, even though the scheme may involve winding up, though in the exercise of its discretion the Court may impose certain conditions upon the company before sanctioning the scheme 3. See notes to s. 54 *ante*.

Court's jurisdiction.

The power given to the Court to sanction a scheme of arrangement between a company and its creditors or between the company and its members extends to debenture-holders and other creditors and enables the Court to sanction a scheme, although it deprives the debenture-holders of their security wholly or in part 4. The Court may also sanction an arrangement whereby terminable debentures or debenture bonds are converted into perpetual debenture stock 5.

The Court has a wide discretion in the matter 6, though it will reject the scheme only where it is shown that there has been something wrong; but where the creditors acting in good faith and on sufficient information and with time to consider what they are about have pronounced that a particular scheme is to their commercial advantage, the Court will be slow to differ from them 7.

Where an application was made for the sanction of a scheme under which the liabilities of a company were to be paid up in full by a new company which was to take over the assets and liabilities of the old company and the shareholders in the existing company were to receive shares of the new company as provided by the scheme, and meetings were held and the requisite resolutions of the different classes of shareholders and debenture-holders passed in favour of the scheme, it was held by the Court of Appeal that there was no jurisdiction under the section to compel the ordinary shareholders to take shares in the new company 8.

The Court sanctioning a scheme has jurisdiction to entertain an application for an order modifying the scheme so as to expunge from the scheme certain words preventing the decree-holder from executing his decree 9.

Foreign company.

In the case of a foreign company having its central office in British India the High Court, in whose jurisdiction such office is situate, can entertain an application under this section at the instance of a creditor or member of such a foreign company. When once an application for winding up a foreign company is made in a British Indian Court, the expression "Court" in this section must mean the Court in which the company is being wound up and therefore such Court will have jurisdiction to entertain an application under this section even before an order for

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1. English &c. Bank [1893] 3 Ch. 385 (396).
2. Palace Hotel Ltd. [1912] 2 Ch. 438; J. A. Nordberg Ltd. [1915] 2 Ch. 439; In re Schweppes, Ltd. [1914] 1 Ch. 322; Katni Cement & Industrial Co. [1937] B. 423, 39 Bom. L. R. 675.
3. Katni Cement & Industrial Co. (supra).
4. Alabama &c. Ry. Co. [1891] 1 Ch. 213; Empire Mining Co. [1890] 44 Ch. D. 422.
5. Re Shandon Hydropathic Co. [1911] S. C. 1153.
6. English &c. Bank [1893] 3 Ch. 385, per Lindley L. J.
7. Ibid and Anglo-Continental Supply Co. [1922] 2 Ch. 723.
8. General Motor Cab Co. [1913] 1 Ch. 377.
9. Dewangunge Bank & Industry Ltd. [1935] C. 117, 38 C. W. N. 1171, 155 I.C. 811.

winding up is passed by such Court. In such a case the right to apply under this section is not restricted only to a liquidator 1. As to the mode of proceeding in such a case see the last cited authority.

"Compromise" & "arrangement.

A power to compromise rights presupposes some dispute about them or difficulty in enforcing them 2. A proposed scheme for amalgamation of two companies, though not a compromise, may be an arrangement within this section, and there is no ground for limiting the meaning of the word to the question of some dispute or difficulty to be resolved by a compromise or arrangement 3. "A reasonable compromise must be," observed Lord Justice Bowen, "a compromise which can by reasonable people conversant with the subject be regarded as beneficial to those on both sides who are making it... I have no doubt at all that it would be improper for the Court to allow an arrangement to be forced on any class of creditors, if the arrangement cannot reasonably be supposed by sensible business people to be for the benefit of that class as such" 4.

The word "arrangement" as used in this section means something analogous in some sense to a compromise. In any arrangement which can fairly be called a compromise or considered as analogous to a compromise there must be both give and take 1. Where the directors are authorized to manage the company, a proposal made by them under this section in the name of the company is valid and proper 5.

A meeting of the company is not a condition precedent to proposal under this section and the directors can initiate such proposals 6. The company need not take proceedings to alter the memorandum and the articles before the Court can sanction such an alteration 7.

The reconstruction of an existing company by winding up and sale of its entire undertaking and assets for shares in a new foreign company, though outside the scope of a reconstruction under the old s. 213, may be effected as an arrangement under this section 8. In the last noted case the Court's jurisdiction and duty under the section were explained by Astbury J.

If a proper provision is made for dissentient members, reconstruction of an existing company by winding up and sale of the entire assets for shares in a new company may be effected under this section 9.

A mere agreement on the part of the shareholders is not enough for the acceptance of a scheme. It is ultimately for the Court to sanction it or not. It is no doubt open to a party to withdraw his offer before the scheme is put before the shareholders and sanctioned by the Court, but he may be estopped by his action or conduct 10.

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1. Travancore National &c. Bank [1939] M. 318.
2. Mercantile Investment Co. v. International Co. [1893] 1 Ch. 484 n., 68 L. T. 603 n.; Mercantile Investment Co. v. River Plate &c. Co. [1894] 1 Ch. 578.
3. Guardian Assurance Co. [1917] 1 Ch. 431.
4. Alabama &c. Ry. Co. (supra).
5. India Flour Mills Ltd. (supra); General Motor Cab Co. [1913] 1 Ch. 377.
6. Tata Iron & Steel Co. [1928] B. 80, 30 Bom. L. R. 197; Bruce Peebres & Co. v. Baine & Co. [1918] S. C. 781.
7. Tata Iron & Steel Co. (supra); Palace Hotel Ltd. [1912] 2 Ch. 438; Schweppes Ltd. [1914] 1 Ch. 322; J. A. Nordberg Ltd. [1915] 2 Ch. 439.
8. Anglo-Continental Supply Co. [1922] 2 Ch. 723; see also Canning Jarrah Timber Co. [1900] 1 Ch. 708; Tea Corporation [1904] 1 Ch. 12; Sandwell Park Colliery Co. [1914] 1 Ch. 589.
9. Sandwell Park Colliery Co. (supra).
10. Union Indian Sugar Mills Co. [1930] A. L. J. 305, [1930] A. 330.

Under ss. 153 and 154 of the English Act of 1929, corresponding to this section and s. 153A, Bennet J. sanctioned a scheme of arrangement by which the company was allowed by its directors and liquidators to enter into an agreement with another company for adoption of the scheme by the latter and for transfer of the business and assets of the company to the other company 1.

What the Court considers in sanctioning a scheme.

The *procedure* is to apply to the Court by summons in the first instance to direct meetings of the different classes of the creditors and contributories and take directions from the Court 2. After the proposed scheme has been passed by the requisite majority, a petition is presented to the Court for sanctioning the scheme 2.

In exercising the power under this section the Court will consider whether the class summoned to a meeting was fairly represented by those who attended and whether the statutory majority who approved the scheme acted *bona fide* or were seeking to promote interests adverse to those of the class whom they professed to represent 3.

In exercising its power of sanction the Court will also see that the provisions of the statute have been complied with 4. The Court will see that the majority are acting *bona fide* and then only it will give effect to the decision of the meeting 5 ; but at the same time, the Court will be slow to differ from the meeting, unless either the class has not been properly consulted or the meeting has not considered the matter with a view to the interests of the class which it is empowered to bind, or some defect is found in the scheme 6.

When the scheme contemplated the formation of a new company to take over the assets of the liquidating company and shareholders in the old company are allowed to take shares, not fully paid up, in the new company in respect of shares as to which they are liable in the winding up, the Court may, as a condition of sanctioning the scheme, require the insertion, in the memorandum of association of the new company, of a clause preventing them from escaping liability by transferring their new shares 7.

In sanctioning a scheme to alter the memorandum of association under the section, the Court will also see that the minority is not being over-ridden by a majority having interest of their own clashing with those of the minority whom they seek to coerce. Further, the Court has to look at the scheme and see whether it is one as to which persons acting honestly, and viewing the scheme laid before them in the interest of those whom they represent, take a view which can be reasonably taken by business men 8.

It is usual for the scheme of arrangement between a company and its creditors to contain a provision empowering some one, be he a liquidator or some other officer of the company, to assent to any such modification as the Court may think fit to impose. In the absence of any such person, it is not open to the Court *suo motu* to impose on a creditor any condition which will operate by way of modification of the scheme, especially in the absence of the consent of the persons who have entered into the arrangement 9. In the last cited case the creditors were unrepresented before the Court and could not give

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1. Star Tea Co. [1930] W. N. 4.
2. Alabama &c. Co. (infra) ; Slater v. Darlastan &c. Co. [1877] W.N. 139, 165.
3. Alabama &c. Co. [1891] 1 Ch. 213.
4. Neath v. Brecon Ry. [1892] 1 Ch. 349.
5. English, Scottish & Australian Bank [1893] 3 Ch. 385, 398, 409.
6. Ibid at p. 409 ; London Chartered Bank of Australia [1893] 3 Ch. 540, 545.
7. London Chartered Bank of Australia [1893] 3 Ch. 540.
8. Tata Iron & Steel Co. (supra) ; Alabama &c. Co (supra).
9. Mihirendra v. Brahmanberia Loan Co. [1934] C. 816, 61 Cal. 1047.

their assent to the modification. So Costello and Lort-Williams JJ. set aside the order of Ameer Ali J.

Where the Court will not give sanction.

As a general rule the Court would not sanction an arrangement if it would prejudice a creditor whose rights would have been preferential if the winding up petition had been carried on 1 ; nor would it sanction an arrangement which did not provide that the new company should undertake to obey the order of the Court as to any proceedings which the Court might think it right to have taken against officers of the old company 2. A Court will not give sanction to a scheme which will have the effect of enabling a bank or other company which is, to all intents and purposes, insolvent, to continue carrying on business and attract deposits which in all probability will go the way of the former deposits 3.

Scheme sanctioned differs from agreement.

A scheme when sanctioned by the Court becomes something quite different from a mere agreement signed by the parties. It becomes a statutory scheme. So when the debt of one of joint and several debtors, being a company, is released by a scheme of arrangement in the liquidation of that company, the scheme does not release the other debtors 4.

Who is a creditor.

Every person having a pecuniary claim against a company, whether actual or contingent, is a creditor within this section 5 ; but holders of debentures payable to bearer are not entitled to vote unless they produce their debentures at or before the meeting 6.

Creditors casting their votes at a meeting of creditors under this section for or against a scheme of arrangement are entitled to have the result of the poll recorded 7. Where certain scrutineers were appointed by the Court to assist the chairman under order of the Court, the decision of the chairman as to the admissibility of any proxy was held to be final subject to the Court's order of revision 7. The scrutineers have no *locus standie* to file a petition for direction as to the validity of proxies used at the meeting, and the Court ought not to exercise its powers of revision unless and until the chairman has given his decision as to the admissibility of the proxies 7.

Notice &c.

When the Court is exercising jurisdiction under this section, certain principles must be kept in view before sanction to a scheme is accorded. The regularity of the meeting directed by the Court to be held would be a very important point for the Court to consider. This would include the question of service of notice of the meeting and questions relating to the conduct of the meeting 8. But the section does not make it obligatory upon the Court or the company to serve the notice on each and every creditor of the company, and a decision arrived at by the creditors and the company in the absence of any individual creditor is not therefore invalid 9.

Majority of three-fourths.

Sub-s. (2). If the votes cast be a multiple of three or some such number, will the fraction be taken into computation ? It appears that the maxim *de minimis non curat lex* is not applicable to such a case and the fraction must be taken into account in computing the majority. In construing a trust deed which required a majority of three-fourths for passing a certain resolution the Bombay High Court held that the above maxim is applicable only to the

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1. Richards & Co. [1879] 11 Ch. D. 676.
2. Practice Notes [1894] W. N. 166.
3. Nilphamari Luxmi Bank [1936] 63 Cal. 99.
4. Garner's Motor, Ltd. [1937] 1 Ch. 594.
5. Craig's Claim [1895] 1 Ch. 267.
6. Wedgwood Coal & Iron Co. [1877] 6 Ch. D. 627.
7. Dawson v. Hormusji [1932] R. 96, 10 Rang. 189.
8. Mahiganj Loan Office v. Behari Lal [1937] C. 507.
9. Bhagat Ram v. Angels Insurance Co. [1937] L. 442, 39 P. L. R. 230.

computation of time in which the law neglects a fraction and that in computing the majority of votes a fraction cannot be disregarded 1. The nominal value of policies of an insurance company must be accepted as the value of the policies for the purpose of ascertaining majorities at meetings beld to approve or disapprove of a scheme of compromise under this section 2.

Voting.

If a person is a member of more than one class, he may attend and vote at meetings of each class of which he is a member 3. The scheme need not be approved by a majority in value of all the creditors or members provided that the requisite majority of those present in person or by proxy sanction it 3.

Proxy.

This section gives a general right to vote by proxy, using any proper form of proxy, and the proxies need not be sent to the company's office before the meeting 4. Directors, who, pursuant to the Court's order, receive proxies for or against a scheme, must use them 4. As to the form of proxy, the form given in reg. 67 of Table A may be a useful guide until rules are framed by the High Courts under the amended s. 246, and definite direction from the Court may be taken 5. Where the company is being wound up, the provisions in the rules made by the High Courts under s. 246 6 may be followed 7.

Class Meetings.

Meetings of each class of creditors or shareholders must be held separately, each class being confined to those persons whose rights are not dissimilar to make it impossible for them to consult together with a view to their common interest 8. The presence of shareholders of another class is however a matter relating to the conduct of the meeting which lies in the hands of the chairman with the assent of those persons who are properly present and constitute the meeting, and where no objection is taken at the meeting, those present must be taken to have assented to the meeting being so conducted, and the resolution passed thereat will accordingly be valid 9.

At a meeting held under this section the written acceptance of the arrangement by those shareholders and creditors who are not present, either in person or by proxy, cannot be taken into consideration to make up the requisite majority 10.

If in a company different amounts are paid on shares or some shareholders have paid amounts in advance of calls, this makes various classes of shareholders and separate meetings must be called 11.

In *Sovereign Life Assurance Co. v. Dodd* 12 it was held that insured persons whose policies had matured formed a distinct class of creditors from those whose policies

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1. Lakhmidas & Co. v. Sir Dorab [1927] B. 195 (198), 51 Bom. 247, 29 Bom. L.R. 19, 101 I. C. 229.
2. Light of Asia Insurance Co. [1941] 45 C. W. N. 979.
3. Madras Irrigation Co. [1881] W. N. 120.
4. Dorman, Long & Co. [1934] Ch. 635.
5. As is done in England, see Magadi Soda Co. [1925] 41 T. L. R. 297.
6. As to the Rules recently made by the Calcutta High Court, see the Appendix and Rule 186 et. seq., Form No. 58 and the note appended to that Form.
7. See Central Bahia Ry. Co. [1902] 18 T. L. R. 503 and Madras Irrigation Canal Co. [1881] W. N. 120 where it was held that for the purposes of a meeting of any particular class proxies can only be given to members of that class.
8. Sovereign Life Insurance Co. v. Dodd [1892] 2 Q. B. 573, 583 per Bowen L. J.
9. Carruth v. Imperial Chemical Industries [1937] A. C. 707 per Lord Maugham & Lord Russell of Killowen.
10. Kashmiri Bank v. Rai Gokul Chand [1917] 40 I. C. 57.
11. United Provident Assurance Co. [1910] 2 Ch. 477.
12. [1892] 2 Q. B. 573 quoted by Lort-Williams J. in Jalpaiguri Banking & Trading Corpn. [1937] C. 401, 172 I. C. 717.

had not matured. In that case Lord Esher, M. R. said : "They must be divided into different classes. What is the reason for such a course ? It is because the creditors composing the different classes have different interests ; and therefore if we find a different state of facts existing among different creditors which may differently affect their minds and their judgment, they must be divided into different classes. In the present case the persons who had notice of the meeting were policy-holders, that is to say, policy-holders whose policies had to be dealt with. But the defendant was not a policy-holder at all, his policies had been fulfilled, and he was a creditor for the amount of his policies and could have sued the company for money due ; he had a vested cause of action, the policy-holders had none ; and it is obvious that he could not consider the matter with the same mind and the same point of view as the policy-holders who were summoned to the meeting." In the same case Bowen L. J. at p. 583 observed : "It seems plain that we must give such a meaning to the term 'class', as will prevent the section being so worked as to result in confiscation and injustice and that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest."

Different classes of creditors.

In the Calcutta High Court there is a conflict of decisions on the question whether unsecured creditors, *e.g.*, depositors who have already obtained a decree belong to a class different from that of those who have not obtained a decree for their money. In one set of cases it was held that the decree-holders belonged to a different class and as such were not bound by the scheme when a separate meeting of their class was not held [1] ; while in another set of cases it was held that they did not belong to a different class [2]. The question has however been set at rest by the amended sub-s. (6) which says that for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

Before ordering a meeting of the class of creditors with whom it is proposed to make an arrangement, it is not necessary that the Court should first have issued notices where the chairman of the meeting is careful to satisfy himself and to certify to the Court that notice of the application and of the meeting ordered had been sent to and acknowledged by all creditors [3].

Where notice of a meeting to frame a scheme under this section is given to all creditors and one of them receiving the notice assigns the debt due to him to one of the debtors of the company before the date of the notified meeting, the assignee does not pass on to a new class of creditors, *viz*., debtor-creditors. Such a case bears no analogy to cases where a set off is allowed in liquidation proceedings on the principle of banktuptcy laws [1].

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[1] Manikganj Trading & Banking Co. v. Madhabendra [1936] C. 162, 40 C.W.N. 580 ; Noakhali Loan Co. v. Hemendra [1936] C. 402 ; Dewangunj Bank & Industry, Ltd. [1935] C. 117, 38 C. W. N. 1171, 155 I. C. 811 ; Sushila Bala v. Anjuman Trading Co. [1935] C. 398, 156 I. C. 590 ; Melanda Loan Office [1935] 39 C. W. N. 690 ; Rajshahi Banking Corpn. v. Surabala [1936] 40 C. W. N. 1104 ; Sudhanya Kumar v. Faridpur Loan Office [1937] C. 169, 171 I. C. 492 ; Krishna Nath v. Dinajpur Loan Office [1938] 2 Cal. 30, [1938] C. 337 per B. K. Mukherjea J.) ; Rajshahi Banking & Trading Corpn. v. Pulin Behari [1938] 42 C. W. N. 610 ; Mahiganj Loan Office v. Behari Lal [1937] C. 507.

[2] Barisal Loan Office v. Sasthi Charan [1936] C. 282, 39 C.W.N. 1198 ; Serajgunj Loan Office v. Nilkantha [1935] C. 777, 39 C. W. N. 1199, 62 C. L. J. 310 ; Nator Kamala Bank [1937] C. 124, [1937] 1 Cal. 368 ; Jalpaiguri Banking & Trading Co. [1935] 39 C.W.N. 875, [1937] C. 401 ; Badarganj Loan Office v. Shaharuddin [1937] 41 C.W.N. 1272. See also Bhagat Ram v. Angels Insurance Co. [1937] L. 442, 39 P. L. R. 230.

[3] India Flour Mills Ltd. [1934] S. 54, 149 I. C. 51.

Court's control over meetings.

The section does not expressly give the Court control over the proceedings at the meeting. But it seems to have an inherent power to give directions [2]. Though "Court meetings" are subject to the direction of the Court, where no express direction is given the articles must be looked to so far as they are applicable [3].

"I think the Court has", says Vaughan Williams J., "an inherent power to direct the mode in which meetings shall be held, and the mode in which proxies shall be evidenced, and to determine all such questions as whether it is necessary that the proxy shall be produced at the meeting" [4]. Proxies on which the day of the meeting was not named were held to be good if properly stamped [4].

The terms of the section are wider than those of s. 120 of the English Act of 1908 (s. 153 of the English Act of 1929). Under this section the Court has ample power to settle a form of proxy and any substantial failure to comply with the Court's direction will invalidate the proxy [5].

A meeting of shareholders not convened exactly in accordance with the directions of the Court may be held good, if in the result a sufficient number of shares is accounted for [6].

Three-fourths in value.

The sanction of three-fourths in value of the members of the class *present* in person or by proxy is sufficient although it may not be three-fourths in value of the total class [7].

Alternative mode of liquidation—stay of suits etc.

A scheme under this section is an alternative mode of liquidation, which by the operation of law relieves the company and its contributories from liability further than that which is contemplated or imposed by the scheme, any express words staying proceedings by creditors being unnecessary [8]. It is therefore a provision with respect to winding up within the meaning of s. 271 *post* [9]. Failure of a scheme for resusciation of a company is not by itself sufficient to justify a winding up order being made. This section makes provision not merely for schemes for the resusciation or reorganisation of companies, but it also provides for a scheme of arrangement, an alternative mode of liquidation, which the law allows the statutory majority of creditors to substitute for winding up, whether voluntary or under the Court [10]. But under this section the Court could not restrain suits or proceedings against the company as under s. 169 [11]. The Act was defective in this respect. The difficulty could be got over by presenting a winding up petition in the first instance, getting stay of proceedings under s. 169 and asking the Court for an order to allow the petition for winding up to stand over till the preparation and sanction of a scheme under this section 1. But now the defect has been removed by the new sub-s. (5).

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[1] Anukul v. Serajganj Loan Office Co. [1939] 43 C. W. N. 1181.

[2] English, Scottish & Australian Bank [1893] 3 Ch. 385, 395.

[3] Tata Iron & Steel Co. [1928] B. 80, 30 Bom. L. R. 197.

[4] English, Scottish &c. Bank [1893] 3 Ch. 385 ; see also Dawson v. Hormusji [1932] R. 154, 10 Rang. 438.

[5] Tata Iron & Steel Co. [1928] B. 80, 30 Bom. L.R. 197 ; see also Inter Oceanic Ry. Co. [1898] 3 Manson 162, and English, Scottish & Australian Bank (supra).

[6] Anglo-Spanish Tarter Refineries [1924] W. N. 222, 68 S. J. 738.

[7] Bessemer Steel & Ordnance Co. [1876] 1 Ch. D. 251.

[8] London and Chartered Bank (supra) ; Dane v. Mortgage Insurance Corpn. [1894] 1 Q. B. 54 ; Matilal Kanji & Co. v. Natvarlal [1932] B. 78, 33 Bom. L. R. 1495.

[9] Travancore National &c. Bank [1939] M. 318.

[10] Per Tekchand J. in Madan Gopal v. Peoples Bank of N. India [1935] L. 779, 16 Lah. 1029, 158 I. C. 16.

[11] The Court could not, after ordering meeting to be summoned, stay an execution on a judgment recovered before the order : see Booth v. Walkden &c. Co. [1909] 2 K. B. 368.

Arrangement involving reduction of capital.

If the scheme of arrangement involves a reduction of capital, all the requirements of the Act with regard to reduction must be complied with 2. It is necessary to advertize the petition for sanctioning the scheme, unless the Court dispenses with advertisement 2. Members or creditors who do not appear at the hearing of the petition cannot appeal without leave 3. A company having power under its articles of association to reduce its capital by paying off capital, cancelling lost capital, reducing the liability on its shares, "or otherwise as may seem expedient" is entitled to reduce its capital in any manner authorized by statute. The scheme for reduction of capital having been fully and properly explained to the shareholders without concealment of any relevant facts and approved, on a poll being taken, by the requisite majorities of each class, ought properly to be approved by the Court 4. The directors are not under any duty to the shareholders to disclose to them in the circular explaining the scheme, their holdings or respective proportional interests in ordinary and deferred shares 4.

Who are bound by the order.

The order sanctioning the scheme becomes binding not only on the creditors but also on the liquidators and contributories, so that whether the scheme be a valid one or not, a shareholder cannot afterwards question it 5. A creditor being bound under this section by an arrangement between the company and its creditors, the omission of the company to raise a plea to this effect at the original trial is not a bar to its being raised in the execution proceeding 6.

When a scheme of composition under this section has been sanctioned by the High Court and it has further been decided that a particular decree-holder is bound by it, the High Court has power to restrain by injunction proceedings in execution started by the decree-holder in a maffasil Court after getting the decree transferred there 7.

Executing Court.

A scheme sanctioned by the Court under this section covering creditors who had already brought suits or obtained decrees cannot be attacked collaterally in execution proceedings as one without jurisdiction, either on the ground that notice of the meeting had not been served on the executing decree-holder or on the ground that notice of the meeting was not served on the objector or that separate meetings of different classes of depositors had not been ordered. Such defects, even if made out, would not be errors of jurisdiction 8. An objection by the judgment-debtor company that the creditor's decree has been superseded by the scheme sanctioned is an

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1. See Bowkett v. Fuller's United Electric Works (infra), and London Chartered Bank of Australia [1893] 3 Ch. 540.
2. White Pass Ry. Co. [1918] W. N. 323, 63 S. J. 55 ; Cooper, Cooper & Johnson [1902] W. N. 199, 51 W. R. 314.
3. Securities Insurance Co. [1894] 2 Ch. 410.
4. Imperial Chemical Industries [1936] 1 Ch. 587 C. A.
5. Bowkett & Fuller's United Electric Works [1923] 1 K. B. 160.
6. Hargopal v. Peoples Bank of N. India [1934] L. 515, 152 I. C. 119, 35 P.L.R. 521.
7. Jalpaiguri B. & T. Corpn. [1936] 40 C. W. N. 551.
8. Mahiganj Loan Office v. Behari Lal [1936] 41 C. W. N. 406, [1937] C. 507 ; Krishna Nath v. Dinajpur Loan Office [1938] 2 Cal. 30, [1938] C. 337.

objection under s. 47, C. P. Code 1. A scheme is not an adjustment within the meaning of O. XXI, r. 2, C. P. C. and does not require to be certified or recorded in order that the executing Court may recognize the scheme 2. When one Judge has sanctioned the scheme, it is not within the power of another Judge exercising equal jurisdiction to declare in effect that the scheme to the extent it affects a particular person is a nullity 3.

Date when compromise becomes binding.

The agreement or compromise referred to in this section becomes binding from the date when it is arrived at, subject to subsequent sanction by the Court 4. It is the proceeding of the meeting that is to be binding provided only that it does not fail to be subsequently sanctioned 4.

Assent of classes.

If some of the classes of persons have no interest because the whole value of the assets is exhausted by those who have priority over them, the assent of that class at a meeting is not necessary and the Court can sanction the arrangement inspite of their opposition 5.

Directors' position.

Where the directors of a company induced some of the shareholders to give their options to purchase their shares for securing consent of the majority to an amalgamation, and upon amalgamation the directors made profits, it was held that they were trustees of this profit for the benefit of those shareholders 6. If upon a reconstruction special privileges are made for the benefit of the directors, they must be disclosed; otherwise sanction of the members to the scheme will be inoperative 7.

Subsequent alteration.

The Privy Council has held that where a proposed scheme accepted by a meeting of shareholders and approved by the Court was subsequently altered by changed circumstances, a meeting of shareholders should again be summoned to consider the amended scheme, and the Court has power to approve of the modification 8.

Withdrawal of sanction.

"It is conceivable", observed Lort-Williams J. 9, "that the Court may have power to withdraw its sanction to any scheme, or may give leave to appeal against the order even though application for such leave has not been made within time [*Securities Insurance Co.* 10]; but I apprehend that such serious steps will not be taken unless application for such withdrawal or leave is made promptly and before the position of those interested has been irretrievably altered as by the barring of claims or by the payment of dividends or by the acquirement of rights by any of the parties to an arrangement which has received the sanction of the Court. Upon this point reference may be made to the observations of Lord Esher, M. R. and Cotton, L. J. in *Nicholl v. Eberhardt Co.* [1890] 61 L. T. 489."

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1. Mahiganj Loan Office v. Behari Lal (supra); Rajshahi Banking & Trading Co. v. Pulin Behari [1938] 42 C. W. N. 610.
2. Ibid; House of Labourers v. Comilla Banking Corpn. [1937] 173 I. C. 431.
3. Jalpaiguri Banking &c. Corpn. [1937] C. 401 per Lort-Williams J.
4. Raghubir v. Bank of Upper India [1919] 23 C. W. N. 697, 46 I A. 135; Badarganj Loan Office v. Shaharuddin [1937] 41 C. W. N. 1272.
5. Tea Corporation [1904] 1 Ch. 12.
6. Allen v. Hyatt [1914] 30 T. L. R. 444 P. C.
7. Kaye v. Croydon Tramway [1898] 1 Ch. 358.
8. Kamalapat v. Union Indian Sugar Mills [1929] P. C. 256 50 C. L. J. 561.
9. Mymensingh Loan Office [1937] C. 667, 41 C. W. N. 599.
10. [1894] 2 Ch. 410.

Appeal.

There was no appeal under s. 202 from an order made under this section on an application by a company which was not in the course of being wound up [1]. But now a right of appeal has been given by the new sub-s. (7) [2]. Where the Court orders that proxy forms used at a meeting of creditors should be rejected and another such meeting should be held, such an order is a judgment within the Letters Patent and is appealable, since the effect of the order is to determine finally that the decision of the creditors who had duly voted for or against the scheme should not be ascertained or recorded and to render inoperative the poll [3]. A mere stranger who would be benefited by the scheme cannot appeal [4].

Compare s. 54 and see notes thereto, and the new s. 66A.

Provisions for facilitating arrangements and compromises.

153A. (1) *Where an application is made to the Court under section 153 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as a 'transferor company') is to be transferred to another company (in this section referred to as 'the transferee company'), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters :—*

(a) *the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company ;*

(b) *the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person ;*

(c) *the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;*

(d) *the dissolution, without winding up, of any transferor company ;*

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1. Viramgam S. & M. Co. v. Industrial Bank [1925] B. 442, 27 Bom. L. R. 655.
2. See also Mymensingh Loan Office (supra).
3. Dawson v. Hormusji [1932] R. 96, 10 Rang. 189, following Levy Bros. v. Knowles, Ltd. [1927] C. 689, 31 C. W. N. 894, 103 I. C. 659. See also Dawson v. Hormusji [1932] R. 154, 10 Rang. 438, where the application for sanctioning the scheme was made by the liquidator.
4. Matilal Kanji & Co. v. Natvarlal [1932] B. 78, 33 Bom. L. R. 1495.

(e) *the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement ;*

(f) *such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.*

(2) *Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.*

(3) *Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the registrar for registration within fourteen days after the completion of the order, and if default is made in complying with this sub-section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.*

(4) *In this section the expression 'property' includes property, rights and powers of every description, and the expression 'liabilities' includes duties.*

(5) *Notwithstanding the provisions of [sub-section (6)] of section 153, the expression 'company' in this section does not include any company other than a company within the meaning of this Act.*

Amendments. This new section has been inserted by the Companies (Amendment) Act, 1936. It reproduces s. 154 of the English Companies Act, 1929. In sub-s. (5) the expression within square brackets has been substituted for "sub-section 4" by the amending Act II of 1938.

Scope. A company has no power to enter into, nor can the Court sanction, any arrangement or compromise with its creditors under this or the following section (s. 153 B) which necessarily involves the doing of any act which is *ultra vires* the company, being in excess of its corporate powers as defined in its memorandum of association. Thus where the objects of a company, as stated in its memorandum of association, did not include any power to sell or dispose of the company's undertakings, a scheme, which involved the transfer in consideration of shares of the entire undertaking and assets of the company to a new company to be formed for the purpose of acquiring those assets and gradually realizing them, was *ultra vires* and the Court had no jurisdiction to sanction it [1].

Sub-s. (1), cl. (d). This clause provides for dissolution of the transferor company when the transfer of its undertaking has been made, and there appears to be no means of calling back to life the company so dissolved, for s. 243 occurs in Part V dealing with winding up, whereas the present section occurs in Part IV 1.

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[1] Oceanic Steam Navigation Co. [1939] 1 Ch. 41.

Contract of personal service not transferred.

Where an order is made by the Court under this section for the amalgamation of two companies, a contract of personal service existing at the date of the amalgamation between a workman and the transferor company is not transferred thereby 2. "It is of course indisputable that (apart from statutory provision to the contrary) the benefit of a contract entered into by A to render personal service to X cannot be transferred by X to Y without A's consent, which is the same thing as saying that, inorder to produce the desired result, the old contract between A and X would have to be terminated by notice or by mutual consent and a new contract of service entered into by agreement between A and Y" 3.

Right to service is not property.

"At any rate" observed Lord Simon L. C., "after examination of s. 154 (corresponding to the present section) with close attention and considering the consequences of its application in different cases, I can come to no other conclusion than that an order made under it does not automatically transfer contracts of personal service. The word 'contract' does not appear in the section at all, and I do not agree with the view expressed in the Court of appeal that a right to the service of an employee is the property of the transferor company. Such a right cannot be the subject of gift or bequest; it cannot be bought or sold; it forms no part of the assets of the employer for the purpose of administering the estate. In short s. 154, when it provides for 'transfer' is providing, in my opinion, for the transfer of those rights which are not incapable of transfer and is not contemplating the transfer of rights which are in their nature incapable of being transferred 4. As to the rule which ought to govern interpretation of statutes see pp. 20-21 ante).

Power to acquire shares of shareholders dissenting from schemes or contract approved by majority.

153 B. (1) *Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as 'the transferor company') to another company, whether a company within the meaning of this Act or not (in this section referred to as the 'transferee company'), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than three-fourths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the*

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1. See Nokes v. Doncaster Amalgamated Collieries, [1940] A. C. 1014 at p. 1021.
2. Nokes v. Doncaster Amalgamated Collieries [1940] A. C. 1014 reversing Donoghne v. Doncaster Amalgamated Collieries [1939] 2 K. B. 578.
3. Ibid, per Lord Simon, L. C. at p. 1018.
4. Ibid, per Lord Simon, L.C. at p. 1030.

shares of the approving shareholders are to be transferred to the transferee company :

Provided that, where any such scheme or contract has been so approved at any time before the commencement of the Indian Companies (Amendment) Act, 1936, the Court may by order, on an application made to it by the transferee company within two months after the commencement of that Act, authorise notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the Court may by the order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section the expression 'dissenting shareholder' includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

Amendment.

This section also is new. It has been inserted by the Companies (Amendment) Act, 1936, and reproduces s. 155 of the English Companies Act of 1979. See notes to s. 153A.

Arrangement and amalgamation.

It has been held in England that upon a petition to sanction a scheme of arrangement under s. 155 of the English Act (corresponding to s. 153B) the Court has power to determine the terms upon which the shares of shareholders who have dissented from the scheme approved by the majority shall be acquired notwithstanding that since the original offer was made the scheme has been superseded by a later amalgamation which has absorbed the transferee company, and the fact that the petitioners cannot offer to the dissentients the original shares accepted by the majority makes no difference to the jurisdiction of the Court which is only bound to decide whether the terms offered are adequate and reasonable, and if not, to substitute such other terms of purchase as in its discretion are fair and just 1.

Where not less than nine-tenths of the shareholders in the transferor company approve a scheme involving the transfer of the company's shares to a transferee company, *prima facie* the offer must be taken to be a fair one, and the Court will not "order otherwise" unless it is affirmatively established that notwithstanding the views of a very large majority of shareholders, the scheme is unfair 2.

Conversion of private company into public company.

Conversion of private company into public company.

154. (1) *If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the provisions of clause (13) of sub-section (1) of section 2, are required to be included in the articles of a company in order to constitute it a private company, the company, shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, file with the registrar a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the form marked II in the Second Schedule.*

(2) *If default is made in complying with sub-section (1) of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding five hundred rupees.*

(3) *Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in this Act, and thereupon the provisions of this Act shall apply to the company as if it were not a private company:*

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

Amendment.

For s. 154 this new section has been substituted by the Companies (Amendment) Act, 1936, in the terms of s. 27 of the English Act of 1929. For the effect of this new section see Introduction. The original s. 154 was as follows:

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1. Castner-Kellner Alkali Co. [1936] 2 Ch. 349.
2. Hoare & Co. [1934] 150 L. T. 374.

Conversion of private into public company.

154. (1) A private company may, subject to anything contained in its memorandum or articles, by a special resolution and by filing with the registrar a copy of such resolution and also such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a duly verified declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company.

(2) Upon the filing of the documents mentioned in sub-section (1), the registrar shall record the change in his books relating to the company.

A company whose articles contained the restrictions and provisions mentioned in s. 2, cl. (13) remained a private company even though they were not in fact observed or complied with **1**. But now see sub-s. (3).

Conversion of a private company into a public company and *vice versa*.

By complying with the provisions of this section a private company can be converted into a public company. But there is no corresponding provision for converting a public company into a private company either in this Act or in the English Act. In England, it appears, a considerable number of existing companies have, by altering their articles, become private companies under the statute **2**. "In order to convert an existing company into a 'private company,' it is necessary to pass a special resolution altering the company's articles so as to limit the number of members, to prohibit any invitation to the public to subscribe for its shares, debentures or debenture stock, and impose restrictions on the transfer of its shares: These alterations will satisfy the statutory definition, but they are not the only alterations requisite. The articles generally must be considered, for there may be other provisions inconsistent with those indicated, and they must be altered accordingly. For example power to issue share warrants to bearers must be struck out" **3**. But it is significant *first* that there is no express provision for this either in the Indian or in the English Act, *secondly* the new English Act of 1929 (a consolidating Act), although it recasts the provisions of the Act of 1908 in this respect, does not make any provision for converting a public company into a private company. See s. 2 (13) and notes thereto.

PART V.

WINDING UP.

Preliminary.

Mode of winding up.

155. (1) The winding up of a company may be either—

(*i*) by the Court; or

(*ii*) voluntary; or

(*iii*) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up

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1. Park v. Royalties Syndicate [1912] 1 K. B. 330.
2. Gore Browne, 36th ed. p. 456.
3. Palmer, 13th ed. p. 392.

apply, unless the contrary appears, to the winding up of a company in any of these modes.

Meaning of "winding up."

Winding up is a proceeding by means of which the dissolution of a company is brought about and in the course of which its assets are collected and realized and applied in payment of its debts, and when these are satisfied, returning to its members the sums which they have contributed to the company, or paying them other moneys due to them in their character of members. The proceeding is not confined to cases where a company is insolvent, but, may be adopted as a means of enabling the corporations or members to re-incorporate with extended object or further powers or more efficient means of management 1.

It differs from bankruptcy.

Winding up differs from bankruptcy in this respect that in bankruptcy the whole estate, both legal and equitable, is taken out of the bankrupt and is vested in his trustee ; whereas on a winding up the estate, legal or equitable, then in the company, still remains in it until its dissolution, unless disposed of in due course of winding up 2. A corporation does not become dissolved at the commencement of either a voluntary or compulsory winding up 3.

A company once incorporated under the Act cannot be put an end to except through the machinery of winding up proceeding 4, or by removal from the register as a defunct company under s. 247.

Principle followed in winding up.

In a winding up the general principle is—ascertain what is the domicile of the company in liquidation ; let the Court of the country of domicile act as the principal Court to govern the liquidation ; let the other Courts act as ancillary, as far as they can, to the principal liquidation. But although that is so, it has always been held that the desire to assist in the main liquidation will not ever make the Court give up the forensic rules which govern the conduct of its own liquidation 5.

In winding up company exists.

As observed by Viscount Cave, "a company which has been dissolved no longer exists as a separate entity capable of holding property or of being sued in Court ; but a company in liquidation, although the administration of its affairs has passed to the liquidator, retains its complete existence. If the liquidation should be annulled the company will resume its powers" 6.

Where a company cannot be wound up by Court.

If a company is not duly incorporated or is an illegal association 7, the Court has no jurisdiction to wind it up 8. But companies having no capital are subject to the Court's jurisdiction 9.

If an order to wind up is made without jurisdiction, it is not a judgment *in rem* so as to bind strangers, *e.g.*, purchasers of property of the company 10.

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1. Hals. p. 472.
2. Hals. p. 473.
3. Kusum Kumari v. Surendra [1917] 42 I. C. 455.
4. Princess of Reuss v. Bos [1871] L.R. 5 H.L. 176, 193.
5. English &c. Bank [1893] 3 Ch. 385 (394) ; Travancore National & Quilon Bank [1939] M. 318.
6. Employers' Liability Assurance Corpn. v. Sedgwick, Collins & Co. [1927] A.C. 95.
7. Padstow Total Loss Assn. [1882] 20 Ch. D. 137.
8. National D. & A. Corporation [1891] 2 Ch. 505.
9. North of England &c. Association [1900] 1 Ch. 481 ; Padstow Total Loss &c. Assn. (supra).
10. Bowling & Welby's Contract [1895] 1 Ch. 663.

Contributories.

Liability as contributories of present and past members.

156. (1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say) :—

(*i*) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(*ii*) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member ;

(*iii*) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;

(*iv*) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member ;

(*v*) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;

(*vi*) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract ;

(*vii*) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company ; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Principle.

Formerly in the cases of partnerships as well as joint stock companies there was a direct relationship between the creditor and the individual shareholder. "By the Act of 1862," said Lord Cairns, "that state of things in entirely swept away. A capital is created, sometimes limited, sometimes without a limit, but that capital is to be made good in the shape of a common fund and that common fund it is which is to be the source of the payment of every creditor of the company. And although it is quite true that members and ex-members of the company are placed by the Act under liability, that liability is a liability, not to make payments to creditors, but it is liability to contribute to and make good what should be the proper amount of the common fund. Then having got into the common fund every sum which ought to be contributed to it by every person whomsoever, the Legislature takes possession of that common fund and proceeds to distribute it amongst the creditors of the company"[1].

Liability to contribute.

Sub-s. (1). Before a company goes into liquidation the liability to contribute is measured by the contractual obligation arising from membership. But after liquidation this section imposes new liabilities on the shareholders in respect of unpaid calls made before or after the winding up ; and such calls can be recovered, though barred by limitation before the order for winding up was made[2]. The liability of a member under this section in respect of the shares is absolute and flows from the fact of his being on the register of members in respect of those shares. The original contract may supply the reason for his name having been placed there, but after the winding up his liability arises *ex lege* and not *ex contractu*[3].

"It is a mistake," observed Jessel, M. R., "to call that a debt due to the company. It is no such thing. It is not, as has been supposed, in any shape or way, a debt due to the company, but it is a liability to contribute to the assets of the company, and when we look further into the Act it will be seen that it is a liability to contribute to be enforced by the liquidator. It is quite true that a call made before the winding up—and in the case before me a call was made before the winding up—is a debt due to the company, but that does not affect the new liability to contribution"[4].

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[1] Webb v. Whiffin [1872] L.R. 5 H.L. 711 at p. 734.

[2] Vaidiswara v. Siva Subramanya [1908] 31 Mad. 66 ; Sorabji v. Iswardas [1896] 20 Bom. 654 ; see also Bhimbai v. Iswardas [1894] 18 Bom. 152 ; Jagannath v. U.P. Flour Mills [1916] 38 All. 347 ; Whitehouse & Co. [1878] 9 Ch. D. 595 ; Webb v. Whiffin [1872] L.R. 5 H.L. 711 ; East Bengal Sugar Mills [1941] 45 C.W.N. 879, [1941] C. 143, [1940] 2 Cal. 175.

[3] Hansraj v. Asthana [1932] P. C. 240 ; see also Hansraj v. Dehra Dun Mussooree E. Tramways [1933] P. C. 63 at p. 66.

[4] Whitehouse & Co. [1878] 9 Ch. D. 595 at pp. 599-600.

Where a shareholder, including a signatory to the memorandum of association, has failed to pay for shares allotted to him he can, in the event of the company going into liquidation, be placed upon the list of contributories, and the liquidator can make a call upon him for what is due, irrespective of any question of limitation, in which case the Court can enforce the call without requiring the liquidator to institute a suit [1].

The section proceeds upon the assumption that the contributories are all innocent parties and whatever may be the effect of a plea of fraud or misrepresentation as against the managing agents, it does not affect the liability of the contributories as contributories in a winding up [2].

As to the adjustment of the rights of the contributories among themselves, see ss. 192 and 212 (2). For the meaning of the term "contributory" see s. 158.

"Members" include persons to whom shares have been validly transferred after the winding up commenced [3].

Past member when liable.

By mere death a member does not become a past member within the meaning of this section; his estate continues to be liable [4]. "In most cases past members are not liable to contribute at all; for, the present members are primarily liable to make all contributions required, and it is only when they are unable to make such a contribution that any past member is liable" [6]. Where existing members on list A are not called upon to contribute to the full extent of the unpaid amounts of their share money, a past member on the list B cannot be made liable to contribute till list A is exhausted [5]. "In the case of a limited company, if the present members have contributed to the full extent of their limited liability, but their contributions are insufficient to discharge the company's liabilities, the past members are not liable to contribute because the liability on the shares which they held has been discharged by the payments made by their present holders" [6].

Past members or B contributories are liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities and the costs of winding up subject (*inter alia*) to the qualification that they shall not be liable in respect of any debt or liability contracted after they ceased to be members [7]. The call must first be enforced against all B contributories who have not paid it, so as to produce equality of contribution and distribution [7]. If calculating the debts and liabilities of the company as they stood at the date when the B contributories ceased to be members a surplus is found, that must be refunded to the B contributories [7]. "So long as", pointed out Eve J., "there are assets undistributed in the liquidation, it remains open to the Court to correct any mistakes or injustice due to falsified estimates or other unforeseen incidents arising in a prolonged and difficult administration" [8].

The past members of a company limited by guarantee as well as that limited by shares, who have ceased to be members within a year before the commencement of the winding up, are not liable to contribute to the assets of the company, unless it appears to the Court that the existing members are unable to satisfy contributions required to be made by them in pursuance of the Act[1]. A former member will not however escape liability if the transfer of his shares has been merely colourable[2], or if he has transferred his shares to an infant[3]. But where shares were transferred to two infants successively and then to an adult, all the transfers having been registered, it was held that once the company had obtained an adult shareholder on its register, the intermediate transfers could not be avoided and the transferor could not be put on the list of past members, although the company was ordered to be wound up less than a year after the last transfer, but more than a year after the first transfer[4]. If shares have been transferred and owing to default on the company's part the transfer has not been registered, the transferor is entitled to have his name removed from the register[5]. A past member cannot be called upon to make contributions for the adjustment of the rights of the present members[6].

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[1] Ramabhadram v. Manickam [1941] M. 565, [1941] 1 M.L.J. 369, [1941] M. W. N. 275 relying on Hansraj v. Asthana [1932] P. C. 240, 60 I.A.I, 54 All. 827; Hull & County Bank [1881] 15 Ch. D. 507, Vaidiswara v. Sivasubramania [1908] 31 Mad. 66.

[2] Naraindas Lahoredas [1934] S. 39, 149 I. C. 869.

[3] Taylor, Philips & Rickard's case [1897] 1 Ch. 298 C. A.

[4] U. P. Oil Mills v. Jamna Prasad [1933] A. 334, [1933] A. L. J. 233.

[5] Pars Ram v. Jagraon Trading Syndicate [1936] L. 739 reversing Paresh Ram v. Jagraon Trading Syndicate [1936] L. 226, 163 I. C. 126.

[6] Hals. p. 488.

[7] City of London Insurance Co. [1932] 1 Ch. 226.

[8] Ibid, at pp. 230-31.

A director of a company who ceases to be a director does not thereby cease to be a member of the company. He cannot be held to be a "past member" of the company within the meaning of sub-s. (1) (i) of this section[7].

Deceased members & joint members.

A deceased member or his estate remains a member for the purpose of this section so long as his name remains on the register without notice to the company of his death[8]. When shares are registered in joint names, and one of the shareholders dies before winding up, his estate is not liable if the articles are silent on the point ; only the survivor is liable[9]. The liability of personal representatives placed on the list in their representative capacity is limited to the assets in their hands[10].

Trustees & persons to whom shares have been issued at a discount.

Persons whose names are entered in the register as holders of shares as trustees are contributories in their own right and their liability is not limited to the amount of the trust estate[11]. It being *ultra vires* of a limited company to issue shares at a discount or by way of bonus, although authorized to do so by the articles, persons to whom shares have been issued at a discount may be called upon in a winding up to pay in cash for their shares, not only to meet the claims of outside creditors, but also to adjust the rights of the contributories *inter se*[12].

Subscribers to memo. of association.

Persons signing the memorandum of association purely on the understanding that they would be given a certain number of shares as fully paid up in consideration of assets transferred to the company are not liable as contributories even though the contract regarding such shares is subsequently cancelled[13].

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[1] Premier Underwriting Assn. No. 1 [1913] 2 Ch. 29 ; Needham's case [1867] 4 Eq. 135.

[2] Hyam's case [1860] 1 De G. F. & J. 75 ; Discoverer's Finance Corpn. [1908] 1 Ch. 141.

[3] Castello's case [1869] 8 Eq. 504.

[4] Gooch's case [1872] 8 Ch. App. 266.

[5] Sussex Brick Co. [1904] 1 Ch. 598.

[6] Brett's case [1873] 8 Ch. App. 800, 809.

[7] Vazirmal v. Makran Coast S. N. Co. [1938] S. 187, 177 I. C. 577.

[8] New Zealand Gold Extraction Co. v. Peacock [1894] 1 Q. B. 622.

[9] Maxwell's case [1875] 20 Eq. 585.

[10] Baird's case [1870] 5 Ch. App. 725 ; Prayan Prasad v. Gaya Bank [1931] Pat. 44, 10 Pat. 249.

[11] Muir v. City of Glasgow Bank [1879] 4 App. Cas. 337.

[12] Welton v. Saffery [1897] A. C. 299.

[13] Prem Behari v. Billimoria & Co. [1926] A. 524, 24 A. L. J. 576, 48 All. 503 ; see also Macdonald, Sons & Co. [1894] 1 Ch. 89.

When shares forfeited more than a year before winding up.

If shares have been validly forfeited more than a year before the commencement of the winding up, the member cannot be placed on the list of contributories 1, even if owing to the neglect of the company his name has not been removed from the register 2 ; but he may remain liable as a debtor to the company for the calls made before the forfeiture 3. If the forfeiture is invalid, the member will however be placed on the list of contributories 4. A person who claims damages for an improper forfeiture of his shares claims not as a member but as a non-member 5.

Where less than a year.

In the case of a forfeiture made less than a year before the commencement of the winding up, the person whose shares have been forfeited will be liable to be placed on the list as past members 6.

Where induced to take shares by fraud.

Where a person has been induced to take shares by fraud in the prospectus he will be liable to be placed on the list of contributories, unless he applies to have his name removed from the register of members before the commencement of the winding up 7. Where a contract is rescinded for misrepresentation, it is rescinded *ab initio*, and accordingly the shareholder cannot in a winding up be placed on the list of contributories even as a past member 8. But where a person applies for shares in expectation of some commission or special gain, and an arrangement is made therefor and the application is granted, the applicant on allotment becomes a shareholder absolutely, and the breach or unenforceability of the latter arrangement being a collateral agreement does not interfere with his liability as a contributory 9.

Meaning of 'commencement of the winding up'.

Cl. (*i*). A winding up by the Court commences at the time of the presentation of the petition for winding up 10, and a voluntary winding up commences at the time of the passing of the resolution authorizing the winding up 11.

Extended liability may be enforced.

Cl. (*iv*). Notwithstanding these words, a contract contained in the articles extending the member's liability, beyond that under the memorandum, for satisfaction of particular debts may be enforced 12 by a separate suit 13. The qualification in this clause that a member shall not be liable to pay more than the unpaid amount of his share does not make him the less a contributory where the amount of the share money has been paid up, and a petition for winding up under s. 166 made by him is maintainable 14.

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1. Needham's case [1867] 4 Eq. 135.
2. Marshall v. Glamorgan Iron & Coal Co. [1868] 7 Eq. 129.
3. Ladies' Dress Assn. v. Pulbrook [1900] 2 Q. B. 376.
4. Esparto Trading Co. [1879] 12 Ch. D. 191 ; Bottomley's case [1880] 16 Ch. D. 681 ; Bellerby v. Rowland & Marwood's Steamship Co. [1902] 2 Ch. 14.
5. New Chile Gold Mining Co. [1890] 45 Ch. D. 598.
6. Cheyke's case [1870] 5 Ch. App. 63.
7. Reese River Silver Mining Co. v. Smith [1869] L. R. 4 H. L. 64 ; Orient Bank v. Habibulla [1924] 75 I. C. 745.
8. Wright's case [1871] 7 Ch. App. 55.
9. Dehra Dun Mussoorie E. Tramways Co. v. Official Liquidator [1930] A. 357, 52 All. 406, [1930] A. L. J. 139, 126 I. C. 819.
10. S. 168.
11. S. 204.
12. Maxwell's case [1875] 20 Eq. 585 ; Lion &c. Insurance Assn. v. Tucker [1884] 12 Q. B. D. 176.
13. Baird's case [1899] 2 Ch. 593 ; Premier Underwriting Assn. [1913] 2 Ch. 29.
14. Sabapathy Press. v. Sabapathy [1930] M. 240, 57 M. L. J. 426, 53 Mad. 38, 120 I. C. 372.

Company limited by guarantee.

Cl. (*v*). A member of a company limited by guarantee and having a share capital can be sued for the amount unpaid on his shares, but he cannot be placed on the list of contributories for a larger amount than what is prescribed by the memorandum 1.

Cl. (*vi*). This enables the liability of members of an unlimited company to be limited by special contract 2.

Remuneration of directors.

Cl. (*vii*). Where the directors are employed by the company on the footing of articles which entitle them to remuneration, the remuneration is not due to them in their character of members; but they are ordinary creditors 3.

Damages.

If a member is entitled to prove for damages in respect of the issue to him of shares not fully paid when he contracted to take fully paid shares, such a proof will fall within the words "or otherwise" 4.

Set off.

A shareholder is not entitled to set off against the company what he might receive on a winding up against the moneys due to him 5. So a contributory who is a creditor of the company cannot set oft his debt against his liability for calls even if there is an express agreement to do so 6, whether the call was made by the company before or after liquidation. In dealing with a similar provision in the English Companies Act of 1862 Jessel, M. R., observed: "If there is any implication to be drawn from the section at all, it is that set off is not to be allowed when the company is limited" 7.

The material date.

A company's debts and liabilities are ascertained as they exist at the date of the winding up order, for "the tree must lie as it falls" 8.

Interest.

The liability created by the section is a new liability and no provision is made for interest therein. It may be that when a Court makes an order for payment under the section it can direct future interest on the amount fixed in the order until realization, but it cannot include interest prior to that time 9.

Calls.

Calls made in the winding up being calls for something unpaid on the shares are not debt due to the company, but are contributions due by a member. The contribution under this section applies also to unpaid calls made before the winding up, because although that is a debt due to the company it is not the less an amount unpaid on the shares with respect to which the member is liable 10. The unpaid calls are recoverable at the instance of the liquidator though barred by time and though the company could not recover them 11.

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1. Baird's case [1899] 2 Ch. 593; Premier Underwriting Assn. [1913] 2 Ch. 29.
2. Lethbridge v. Adams [1872] 13 Eq. 547; Accidental Death Assurance Co. [1877] 7 Ch. D. 568; Great Britain Mutual Life Assurance Society [1880] 16 Ch.D. 246.
3. Exp. Beckwith [1898] 1 Ch. 324; Dover Coalfields Extension [1907] 2 Ch. 76, [1908] 1 Ch. 65; Bath v. Standard Land Co. [1911] 1 Ch. 618; Dale & Plant Ltd. [1889] 43 Ch. D. 255.
4. Addlestone Linoleum Co. [1888] 37 Ch. D. 191, 198.
5. Ebrahim v. Souh India Industrials [1938] M. 962, [1938] 2 M. L. J. 568.
6. Law Car & General Insurance Corpn. [1912] 1 Ch. 405.
7. Whitehouse & Co. [1879] 1 Ch. D. 595.
8. Warrant Finance Co. [1869] 4 Ch. App. 643, per Selwyn L. J. at p. 647; W. W. Duncan & Co. [1905] 1 Ch. 307.
9. Pars Ram v. Jagraon Trading Syndicate [1936] L. 739.
10. Motilal v. Thakorelal [1912] 36 Bom. 557; Montogomery v. Sikdar Iron Works [1932] C. 691, 36 C. W. N. 409.
11. Jagraon Trading Syndicate v. Manak Chand [1935] L. 335, 16 Lah. 1055, 156 I.C. 951; Pokhar Mal v. Flour & Oil Mills & Co. [1934] L. 1015; see also Jagannath v. U. P. Flour & Oil Mills [1916] 38 All. 347; Hansraj v. Dehradun M. E. Tramways Co. [1933] P. C. 68, 60 I. A. 13, 54 All. 1067.

Limitation. The period of limitation applicable to a suit brought by the liquidator to recover the unpaid amount of the calls is six years from the date of default under Art. 120 of the Limitation Act 1.

157. In the winding up of a limited company any director whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company :

Liability of directors whose liability is unlimited.

Provided that—

(*i*) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up ;

(*ii*) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office ;

(*iii*) subject to the articles a director shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

158. The term "contributory" means every person liable to contribute to the assets of a company in the event of it being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Meaning of "contributory."

Who are contributories. A contributory is a person who has agreed to become a member and whose name is upon the register 2. Fully paid up shareholders are contributories without any qualification 3. Every holder of fully paid shares is a contributory 4, as he is entitled to share in the adjustment of the rights of the contributories among themselves, though he will not be placed on the list of contributories except at his own desire 5. He may present a petition for winding up the company 6

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1. Jagraon Trading Syndicate v. Manak Chand (supra).
2. Oakes v. Turquand [1867] L. R. 2 H. L. 325.
3. Narain Das v. P. & O. Bank [1934] M. 476, 57 Mad. 655.
4. Imperial S. & G. Mills Co. v. Ram Chand [1916] 36 I. C. 980 ; National S. B. Assn. [1866] 1 Ch. App. 547 ; Anglesea Colliery Co. [1866] 1 Ch. App. 555, 2 Eq. 379 ; Hodge's Distillery Co., *ex parte* Maude [1870] 6 Ch. App. 51.
5. Marlborough Club Co. [1868] 5 Eq. 365.
6. National Savings Bank Assn. [1866] 1 Ch. App. 547 ; Osmondthorpe &c. Society [1913] W. N. 243, 58 S. J. 13.

and he is not liable to make any contribution to the assets 1. A fully paid shareholder who has received moneys from the liquidator upon a distribution of surplus assets with notice that the liquidator had not provided for payment of a debt due by the company, is a contributory and will be ordered to pay the amount to the credit of the liquidator 2. A person who is merely a debtor to the company is not a contributory 3.

A person in whose favour a power of attorney was executed by the executors of a deceased contributory and who obtained letters of administration in this country under s. 241 of the Indian Succession Act and got himself registered as a member of the company was a contibutory 4.

Alleged contributory.

A winding up order has been made on the petition of persons alleging themselves to be contributories, being past members who had transferred their shares and who under the deed of settlement were, as between themselves and the other proprietors, discharged from liability. In general an application by an alleged contributory will not be entertained unless he will admit himself to be a contributory 5.

Effect of being placed on the list of contributories.

Once a member is on the list of contributories, unless he succeeds in showing that he should not have been placed on the list, he is liable to the extent of the original share which remains unpaid 6. On the death of a contributory his personal representatives automatically become liable instead of the deceased contributory. No application for the purpose is necessary and consequently no question of limitation arises 7.

Nature of liability of contributory.

159. (1) *The liability of a contributory shall create a debt payable at the time specified in the calls made on him by the liquidator.*

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the Presidency-towns.

Amendment.

By the Companies (Amendment) Act, 1936, the new sub-s. (1) has been substituted for the original sub-s. (1). As to the effect of the amendment see Introduction. The original sub-s. (1) was as follows :

(1) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

When liability begins.

The liability of a contributory began at the date when the contract was entered into whereby he became a member 8. It is a debt by specialty in which the heirs are bound. The same legal obligation binds members and contributories 9. But where the carrying on of a business is *ultra vires* of the

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1. Sylhet and Kachar Tea Co. [1866] 2 Ind. Jur. N. S. 94.
2. Aidall, Ltd. [1933] 1 Ch. 323.
3. E. S. Arbitration Act, British Nation Life Assurance Assn. [1878] 8 Ch. D. 679 at p. 708 ; Lakshmi Flour Mills Co. [1926] A. 101, 23 A. L. J. 934 ; Lee and Moor't case [1868] 5 Eq. 368.
4. Marron & Co. [1937] O. 377, 168 I. C. 185. 5. Buckley, 10th ed. p. 302.
6. Jagannath v. U. P. Flour Mills Co. [1916] 38 All. 347, 14 A. L. J. 349.
7. Punjab S. Chhatar v. Lahore Bank [1932] L. 648, 141 I. C. 168, In this case the application for substitution was made 15 or 16 years after death.
8. West of England Bank [1879] 12 Ch. D. 823 ; Williams v. Harding [1866] L. R 1 H. L. 9.
9. Buck v. Robson [1870] 10 Eq. 629. See s. 21.

company, the *ultra vires* transactions create no debt, either legal or equitable, and the contributories are not liable to pay such debts[1].

Future calls. This section creates a debt[5], but it does not accrue due till the call is made. In any question, therefore, of set off between the company and a member who is also a creditor of the company, no account will be taken of the liability of the member in respect of future calls, not due at the date at which the right of set off arises[2].

Call when payable. When a call is made, it is owing from the day on which it is made, although it be "payable" on a subsequent day[3]. Provisions in the articles as to interest on calls do not necessarily apply to calls made in the winding up[4].

Enforcement of call. When the contributory will not pay the call, the liquidator may proceed either by an application for a "balance order", *i. e.*, an order upon the contributory to pay, or by an action in the name of the company. An action is more appropriate when questions of difficulty are involved ; but the liquidator will be required to give security for the defendant's costs under section 280[5].

In voluntary liquidation. Another method by which calls in a voluntary liquidation may be enforced is by the sale and forfeiture of the shares which must be carried through by the directors under the powers conferred by the articles, with the sanction of the liquidator or of the company in general meeting. If there are no directors, the liquidator may convene a general meeting, which can then elect a sufficient number of directors for the purpose[6]. After winding up a suit for allotment money or call money does not lie in a Court of Small Causes situate outside the Presidency towns[7].

This section is by virtue of s. 271 applicable to unregistered companies.

Sub-s. (2) does not occur in the English Act.

Contributories in case of death of member. **160.** (1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the legal representatives or heirs make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereout of the money due.

(3) *For the purposes of this section the surviving coparceners of a contributory who is a member of a Hindu joint family governed by the Mitakshara School of Hindu Law shall be deemed to be his legal representatives and heirs.*

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1. Madras N. P. Fund [1931] M. 792, 133 I. C. 378.
2. Grissell's case [1866] 1 Ch. App. 528 ; vide s. 186 & notes thereto.
3. Dawes' case [1868] 6 Eq. 232.
4. Welsh Flannel & Tweed Co. [1875] 20 Eq. 360.
5. Pure Spirit Co. v. Fowler [1890] 25 Q. B. D. 235.
6. Ladd's case [1893] 3 Ch. 450.
7. Peoples Bank v. Chanan Ram [1933] L. 657, 143 I. C. 723.

By the Companies (Amendment) Act, 1936, the new sub-s. (3) has been added.

Amendment. For the effect of the amendment see Introduction.

Letters of administration to the estate of a deceased contributory.

The official liquidator need not take out letters of administration to the estate of a deceased shareholder before settling the list of contributories 1. There is nothing in the section requiring the official liquidator to place on the list all persons who may, as representatives, be liable to contribute, nor can the liability of a person who has been placed on the list as representative be affected by the official liquidator doing so 1. Under Mitakshara law a son is liable as a representative of his father as a contributory in due course of administration only to the extent of the separate property of his father in which no other person had any interest in the life time of the father when the joint family is constituted by members other than father and sons 2. The son's share in the joint family property is not liable under the doctrine of pious obligation as the doctrine applies in cases where the family consists of only father and sons 2. But under the new sub-s. (3) the surviving co-parceners of a contributory will be deemed to be his legal representatives and heirs.

The estate remains liable.

Upon the death of a member his estate remains liable to pay any calls until some person is put upon the register as holder of the shares 3 ; but his personal representatives do not incur any personal liability, even if the company places their names upon the register, unless they take the shares into their own names 4. Where the name of a deceased shareholder is put on the list of contributories, the company not being aware of the death, the proceeding is not a nullity as would otherwise be under the ordinary law, for until the company is informed of the death of the contributory the deceased continues to be liable as a member and the company is not bound to take notice of the death otherwise 5.

Where a person who had applied for certain shares and had been placed on the list of contributories and died during the winding up, he did not cease to be a contributory and forfeit the deposit he had made upon the application. The fact that his legal representatives had not been substituted within 90 days did not affect their liability, as the matter is governed not by the Limitation Act but by the present section under which the liability automatically falls on the representatives 6.

Personal liability of executors.

If the executors pay a legacy without making provision for the contingent liability on the shares, they will be personally liable 7 ; but they may be entitled to call upon the residuary legatees to refund for the purpose of indemnifying them the capital sum paid to them, but not the intermediate income 8. An order against a deceased contributory is a nullity ; those persons who represent his estate should be brought on the record before an effective order can be made 9.

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1. Sorabji v. Iswardas [1896] 20 Bom. 654.
2. U. P. Oil Mills v. Jamna Prasad [1933] A. 334, [1933] A. L. J. 233, following Brij Narain v. Mangla Prasad [1924] P. C. 50, 51 I. A. 129, 46 All. 95.
3. James v. Buena Ventura &c. Syndicate [1896] 1 Ch. 456.
4. Buchan's case [1879] 4 App. Cas. 547, 583 ; The liability is limited to the extent of the assets coming into their hands : Prayan Prasad v. Gaya Bank [1931] P. 44, 10 Pat. 249.
5. British India B. & I. Corpn. v. Shiva [1934] B. 469, 36 Bom. L R. 1002, 154 I. C. 178.
6. Sumitra Kuer v. Sitamarhi Sugar Works [1938] P. 287, 19 P. L. T. 214.
7. Taylor v. Taylor [1870] 10 Eq. 477.
8. Jervis v. Wolferstan [1874] 18 Eq. 18 ; Whittaker v. Kershaw [1890] 45 Ch.D.320.
9. People's Industrial Bank v. Ram Chandra [1930] A. 503, 52 All. 430, [1930] A. L. J. 373, 124 I. C. 28. But see note 5 (supra).

Executor's duty.

An executor whose testator held shares in a joint stock company has generally one of two courses open to him. He may have the shares transferred to his own name and become to all intents and purposes a partner in the company. He may, on the other hand, not wish to have the shares transferred to his own name, and he ought in that case to have a reasonable time allowed him to sell the shares, and to produce a purchaser who will take a transfer of them 1.

Case of trustees differs from that of executors.

The case of trustees who take a transfer of shares in their names differs in principle from that of executors who merely intimate their title as executors to the company inorder to claim and exercise the rights which belong to them as the legal representatives of their testator. Trustees have not, in any proper sense of the word, a representative character, but executors have. Having representative rights, it is impossible that they should not be entitled to produce the legal evidence of them to the company for the purpose of having their title in some way recorded and recognized without making them personally liable 2.

Balance order.

A balance order against the personal representatives is not a judgment so as to constitute the liquidator a judgment-creditor and to exclude the executor's right of retainer 3.

Executors can challenge the validity of a purported resolution for winding up and appointment of a liquidator 4.

Joint holders.

Persons registered as joint holders of shares are joint tenants, and upon the death of one of them his liability ceases 5.

Contributories in case of insolvency of member.

161. If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories, then—

(1) his assignees shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company ; and

(2) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

Bankrupt contributory.

A debt due from a company to a contributory cannot be set off against call payable in the liquidation 6 ; otherwise members will be entitled to satisfaction of their debts *pari passu* with the rest of the creditors 7. But where the contributory is bankrupt the two liabilities can be set off 8, unless the contributory is a company in liquidation 9.

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1. Per Lord Cairns in Buchan's case (supra).
2. Per Lord Selborne in Buchan's case (supra).
3. Re Hubback [1885] 29 Ch. D. 934.
4. Howling's Trustees v. Smith [1905] 7 Fraser 390.
5. Maxwell's case [1875] 20 Eq. 585.
6. Grissell's case [1866] 1 Ch. App. 528.
7. *Ibid* at p. 535.
8. Re Duckworth [1867] 2 Ch. App. 578.
9. Auriferous Properties Ltd. [1898] 1 Ch. 691.

Winding up by Court.

Circumstances in which company may be wound up by Court.

162. A company may be wound up by the Court—

(*i*) if the company has by special resolution resolved that the company be wound up by the Court :

(*ii*) if default is made in filing the statutory report or in holding the statutory meeting :

(*iii*) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year :

(*iv*) if the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven :

(*v*) if the company is unable to pay its debts ;

(*vi*) if the Court is of opinion that it is just and equitable that the company should be wound up.

Order without jurisdiction.

If the Court makes an order to wind up a company without having jurisdiction, the order cannot be treated as a nullity, and unless and until it is discharged on appeal it is binding on the creditors and contributories 1, but not on strangers 2.

Jurisdiction of Indian Court.

A limited company formed in England under the English statute and having its registered office in England, but which has its principal place of business in Calcutta, and is managed exclusively by directors in Calcutta, and the business of which is carried exclusively in India, can be wound up by the Calcutta High Court 3.

Court's power discretionary.

There is nothing in the Act or in the Rules which deprives the Court of the discretion which it has in every case so that the Court may, if it thinks fit, refuse to admit a petition, or as an alternative course, give the company notice that a petition for winding up has been presented so that it may take steps to restrain the petitioner from proceeding with the petition 4.

The Court is not bound to make a winding up order 5. If the application is made by a shareholder, the Court will exercise a judicial discretion 6. The case of unlimited companies is open to other considerations 7. A petition presented in bad faith will be dismissed 8.

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1. Re Padstow Total Loss &c. Assn. [1882] 20 Ch. D. 137 C.A.
2. Re Bowling & Welby's Contract [1895] 1 Ch. 663 C.A.
3. Calcutta Jute Mills Co. [1880] 5 Cal. 888.
4. Re Pioneer Bank [1914] 39 Bom. 16, 16 Bom. L.R. 508.
5. European Life Assurance Co. [1870] 9 Eq. 122.
6. Planet &c. Investment Society [1872] 14 Eq. 441, 450 ; Middlesborough Assembly Rooms Co. [1880] 14 Ch. D. 104 ; London Subarban Bank [1871] 6 Ch. App. 641.
7. Professional &c. Building Society [1871] 6 Ch. App. 856.
8. Exp. Hawkins [1859] 28 L. J., Ch. 830 ; M' Donald Gold Mines [1898] 14 T.L.R. 204 ; see Amalgamated Properties of Rhodesia [1917] 2 Ch. 115, 121.

Under s. 174 the Court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories. It has to see whether the other shareholders and creditors agree in thinking that winding up is the best course. If they oppose, the Court will not make an order unless injustice is being done to the petitioner which can only be avoided by making an order for winding up 1.

When share-holders & creditors oppose.

It is particularly the duty of the Courts in India to see that directors and other officers of companies carry out their duties honestly and to punish them if they do not. Compulsory liquidation affords the best opportunity of performing this duty when there is a *prima facie* case of dishonesty against the officers of a company 2. Where the number of shareholders is small and there are no difficulties in the way of a voluntary winding up, the Court may refuse an order on a shareholder's petition 3. Although there may be a suspension of the business of the company for the space of a whole year, the Court will not make an order to wind up the company, unless it is satisfied that there has been an intention on the part of the company to abandon its business or inability to carry it on; and upon the question of such intention the Court will have regard to the opinion and wishes of the majority of the shareholders whose names are on the register 4. But in a proper case, as where there was no *bona fide* intention on the part of the directors to carry on the business properly 5, and where there were matters to be investigated and there was overwhelming influence of one director 6, an order would be made though the number of shareholders were small 7. The Act affords in liquidation proceedings a much easier and less expensive way of collecting debts : a liquidator under orders of the Court is much more likely to collect the balances of the debts due to the company than the directors 2.

Cases where the Court will order winding up and where not.

An order for winding up may be made, although nothing has been paid on the shares and there are no debts 8.

Although the Court has power to make an order for compulsory winding up at the instance of a shareholder, there must be strong ground for exercising the power. A compulsory winding up is a very serious thing for the company and those connected with it, and the company is entitled to have fair notice of the allegations which are going to be made against it. Therefore in dealing with an application by a shareholder it is essential that the petitioner should be confined to the allegations he has made 9. The Court ought not to make a compulsory winding up order on the petition of a shareholder, unless the company has wholly failed to carry out its objects 9. In a case where the Court is satisfied that there is a good ground for making a compulsory order, it may direct a meeting to ascertain the wishes of the contributories as to how the same is to be wound up 9.

Share-holder's petition.

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1. Professional &c. Building Society (supra) ; City & County Bank [1875] 10 Ch. App. 470.
2. Madan Gopal v. Peoples Bank of N. India [1935] L. 779, 16 Lah. 1029, 158 I. C. 816—Special Bench (Young C. J., Addison & Teckchand JJ.)
3. Natal &c. Co. [1863] 1 H. & M. 639 ; Sea & River Marine Insurance [1866] 2 Eq. 545.
4. Tomlin Patent Horse Shoe Co. [1886] 56 L.T. 314.
5. London & County Coal Co. [1866] 3 Eq. 355.
6. West Surrey Tanning Co. [1866] 2 Eq. 737 ; Varieties Ltd. [1893] 2 Ch. 235.
7. Sanderson's Patents Assn. [1871] 12 Eq. 188.
8. Re Caementium (Parent) Co. [1908] W. N. 257.
9. Oriental Navigation Co. v. Bhanaram [1922] 49 Cal. 399, 69 I. C. 241.

It is not however right for the Court, even if it has power, to make a compulsory order on the ground that there was a majority of shareholders who voted at a meeting directed to be held by the Court in favour of winding up by the Court or under its supervision, in the absence of any finding by the Judge of any other ground or of any valid resolution for voluntary winding up (last note). Where the petition by a shareholder contains allegations which all relate to the internal management of the company's affairs, it is a matter for the shareholders themselves to deal with, and not one that would call for interference by the Court [1].

Authority of general meeting is necessary.

Cl. (i). Without the authority of a general meeting the directors are not entitled to present a winding up petition in the name of the company ; but where the directors have presented such a petition, it is open to a general meeting of shareholders to ratify their action [2]. Under this clause it is necessary that a special resolution should be passed.

Cl. (ii). For default in filing the statutory report an order under this clause was passed in *Kent Outcrop Coal Co.* [3]. See the provisions of s. 77 (9), s. 166, proviso (b) and s. 170 (2).

Power of Court is discretionary.

Cl. (iii). If a company does not commence business within a year of its incorporation, or suspends business for a year, the Court may order the company to be wound up [4]. But the power of the Court is discretionary [5], and an order will not be made against the wishes of a majority of the contributories if the Court is satisfied that business will be commenced or resumed [6], or if the past delay is sufficiently accounted for [7]. Commencement within a year of business refers to actually setting to work and not merely allotting shares [4].

If the Court is satisfied that no business has been or will be commenced, an order will be passed on a shareholder's petition, notwithstanding that the company has never received any money and has no debts. If a majority of shareholders unreasonably refuse to pass resolutions for voluntary winding up of a company which never has done nor ever will do any business, a shareholder is entitled to an order [8].

To abandon one or more of the purposes and continue the others is not ceasing to carry on business, provided the principal object of the company is not abandoned [9].

A shareholder of a company which has become amalgamated with another company is not entitled to an order to wind up the first company on the ground that it has ceased to carry on business as a separate company [10].

The matter of granting or refusing an application for winding up rests entirely in the discretion of the Court. In the case of a company which has suspended business for a whole year, the power will be exercised when there is a fair indication that there

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1. Re Pioneer Bank [1914] 39 Bom. 16, 16 Bom. L. R. 508.
2. Galway & Salt Hill Tramways Co. [1918] I. R. 62.
3. [1912] W. N. 26.
4. Re Caementium (Parent) Co. [1908] W. N. 257.
5. Capital Fire Insurance Assn. [1882] 21 Ch. D. 209.
6. Tomlin Patent Horseshoe Co. [1886] 55 L. T. 314 ; Re Middlesborough Assembly Rooms Co. (infra) ; Metropolitan Ry. Warehousing Co. [1867] 17 L. T. 108.
7. Re Middlesborough Assembly Rooms Co. [1880] 14 Ch. D. 104 C. A.
8. Tumacacori Mining Co. [1874] 17 Eq. 534 ; Caementium (Parent) Co. (supra).
9. Thelluson v. Valentia [1907] 2 Ch. I ; Norwegian T. Iron Co. [1866] 35 Beav.223.
10. National Financial Corpn. [1866] W. N. 243, 14 L. T. 749.

is no intention to carry on the business ; if on the other hand suspension is satisfactorily accounted for and appears to be due to temporary causes, the order will be refused 1.

Meaning of "members."

Cl. (iv). The word "members" in this clause means actual members and does not include past members, or representatives of deceased members, or trustees of bankrupt members 2.

Company with a few shareholders.

The inclination of the Court is against applying the expensive machinery of a winding up order to a company with a very few shareholders, unless there be substantial reason for it 3. In such cases a winding up order with its consequent costs is justified by suspicion of fraud which a winding up may succeed in detecting 4.

Creditor is entitled to the order ex debito justitiae.

Cl. (v). A creditor who cannot obtain payment of his debt is entitled, as between himself and the company, *ex debito justitiæ*, to an order if he brings his case within the Act 5. He is not bound to give time 6. Although a creditor of a company which is unable to pay its debts 7 is, as between himself and the company, entitled *ex debito justitiæ* to a winding up order 8, he is not so entitled as between himself and other creditors 9. The Court is not bound by the wishes of the majority of creditors, and it will disregard them where, for example, a single person has a controlling interest 10 or the majority is composed of persons whose conduct requires investigation 11.

Nature of debt.

For a winding up order the debt must be presently payable and the title of the petitioner complete. The law requires that a demand must be made for a debt that is due, and it is not permissible to support a petition by alleging that something else is due 12.

Insolvent company—when.

In a petition under this section the Court has to see whether the company is commercially insolvent, *i.e.*, whether it is unable to meet its current demands, although the assets when realized may exceed its liabilities. If the company is commercially insolvent it may be wound up 13. As observed by Lord Wrenbury, "in such a case, it is useless to say that if the assets of the company are realized there will be ample to pay 20 shillings in the pound ; this is not the test. A company may be at the same time insolvent and wealthy. It may have wealth locked up in investment not presently realizable ; but although this be so, yet if it have not assets available to meet its current liabilities, it is commercially insolvent and may be wound up" 14. The creditors of an insolvent company is entitled to a

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1. Muralidhar v. Bengal Steamship Co. [1921] 47 Cal. 654.
2. Bowling and Welby's Contract [1895] 1 Ch. 663 C.A.
3. Buckley, 10th ed. p. 314.
4. New Gas Generator Co. [1876] 4 Ch. D. 874.
5. London Subarban Bank [1870] 6 Ch. App. 641 ; Western of Canada &c. Co. [1873] L. R. 17 Eq. 1 ; Tikamchand v. Harish [1929] L. 651, 10 Lah. 80 ; Bowes v. Hope Life Assurance Co. [1865] 11 H. L. C. 389.
6. Home Assurance Assn. [1871] 12 Eq. 112.
7. Vide s. 163.
8. London & Subarban Bank [1870] 6 Ch. App. 641.
9. West Hartlepool Iron Works Co. [1875] 10 Ch. App. 618 ; Robson v. Dawsons Bank [1932] R. 75, 10 Rang. 143.
10. Medical Battery Co. [1894] 1 Ch. 444.
11. Varieties Ltd. [1893] 2 Ch. 235.
12. Jambad Coal Syndicate [1934] 62 Cal. 294, 163 I. C. 845.
13. Punjab Flying Club, Ltd, [1933] L. 301.
14. Buckley's Law & Practice under the Companies Act, p. 364.

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Jammu & Kashmir
Srinagar

winding up order even though there may, by reason of prior claims, be no assets coming to them, on the principle that the concern is virtually theirs and they ought to have the control of management 1.

What has to be considered by Court.

Where the Court is called upon to wind up a company under this clause on the ground that it is unable to pay its debts, what has to be considered is not whether the company, if it converted all its assets into cash, would be able to discharge its debts, but whether in commercial sense the company is solvent. In such a case the subscribed capital of the company, which is due and which has not been called up, can be taken into account as money available for discharge of the debts 2.

Where no discretion for Court.

"It is not a discretionary matter with the Court, when a debt is established and not satisfied, to say whether the company shall be wound up or not, that is to say, if there be a valid debt established, valid both in law and in equity. One does not like to say positively that no case could occur in which it would be right to refuse it, but ordinarily speaking, it is the duty of the Court to direct a winding up" 3. When a petitioning creditor alleged that the company was unable to pay its debts, and the allegation is denied on behalf of the company in the objections lodged against the winding up petition, and upon the materials before the Court there was no evidence to justify the finding that the company was unable to pay its debts, the matter was not allowed to proceed by Page C. J. and Maung Ba J. by allowing the petitioning creditor to lead oral evidence to prove the company's inability to pay its debts 4.

Creditor's right.

The right of a creditor however is not his individual right, but his representative right as one of a class 5. If a majority of the class take a different view, the Court, in the absence of special circumstances, making an order "just and equitable" 6, gives effect to such right as the majority desire to exercise 7. The Court under ss. 174 and 223 then has regard to the wishes of the majority, and may refuse to make any order 8 or, if the company be in voluntary liquidation, may make a supervision order instead of a compulsory order 9 or, may direct the petition to stand over, if there is a better prospect of payment on that course being taken 10.

Where it is found that it would be more to the advantage of the creditors and the shareholders if an opportunity is given to the company to complete a proposed sale of its properties, the petition for winding up will be ordered to be adjourned 11.

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1. Isle of Wight Ferry Co. [1865] 2 H. & M. 597.
2. Sudhiya Nath v. Behar National Insurance Co. [1941] 20 Pat. 538.
3. Per Lord Cranworth in Bowes v. Hope Insurance &c. Society [1865] 11 H. L. C. 389, 402 ; see also General Co. &c. [1870] 5 Ch. App. 363 affirmed 5 H.L. 176.
4. Kureshi v. Argus Footwear Ltd. [1931] R. 306, 9 Rang. 323, 133 I. C. 483, following Gold Hill Mines [1883] 23 Ch. D. 210.
5. Crigglestone Coal Co. [1906] 2 Ch. 327, 331.
6. Clandown Colliery Co. [1915] 1 Ch. 369.
7. Uruguay Central Ry. Co. [1879] 11 Ch. D. 372, 383 ; Great Western Coal Co. [1882] 21 Ch. D. 769, 773.
8. Langley Mill Co. [1871] 12 Eq. 26 ; Chapel House Colliery Co. [1883] 24 Ch. D. 259.
9. West Hartlepool Iron Works [1875] 10 Ch. App. 618 ; New York Exchange [1888] 39 Ch. D. 415.
10. Brighton Hotel Co. [1868] 6 Eq. 339 ; Western of Canada Oil Co. [1873] 17 Eq. 1 ; Great Western Coal Co. (supra).
11. Irawady Flotilla Co. v. Mergui Tin Dredging Co. [1924] R. 108, 88 I. C. 138.

The creditor of a solvent company whose debt is *bona fide* disputed will be restrained from presenting a petition for the winding up of the company ; nor can a creditor be allowed to present such a petition as a counter blast to an action brought against him by the company to enforce a legal claim 1. Mere service of a notice of demand by a creditor under s. 163 on a solvent company does not entitle the creditor to a winding up order if the company *bona fide* disputes the existence of the debt. To make an order for winding up in such a case would deprive the company of its rights to have the question decided in the normal way by the Civil Court and this would be opposed to public policy. An application for winding up in such a case must be regarded as a vehicle of oppression and an abuse of the process of the Court and must be dismissed. An order for the compulsory winding up of a company is a very extreme step to take and such order ought not to be lightly passed 2.

Where debt is *bona fide* disputed.

When a debt is *bona fide* disputed by the company no order for winding up will be made and the petition will be dismissed 3. Where a petition against a company is presented ostensibly for a winding up order but really for another purpose, such as putting pressure on the company 4, the Court has an inherent jurisdiction to prevent such an abuse of process and will do so, without requiring an action to be commenced, by restraining the advertisement of the petition and staying all proceedings upon it 5. But if the debt is not disputed on some substantial ground, the Court may decide it on the petition and make the order 6. Where a company has a *bona fide* defence, the petition should be dismissed 7 ; but it is otherwise if the petitioner would in the circumstances be left without a remedy 8.

Where the action of the petitioning creditor in making the application for the winding up of a company and in insisting upon further proceedings in liquidation is not *bona fide*, he should be saddled with the entire cost of the liquidation ; and in the absence of a clear provision in the Companies Act dealing with a case of this kind the matter is governed by s. 35 C. P. Code 9.

In the case of judgment debt.

Where a judgment has been obtained against a company for debt, the judgment-creditor cannot be called upon, on an allegation that it was obtained by fraud, to go into further evidence in support of his claim 10. But upon the respondent undertaking to bring an action to set aside the judgment, the petition may be ordered to stand over 10. If however the judgment be

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1. Tikam v. Harish [1929] L. 651, 117 I. C. 78, 11 L. L. J. 239.
2. W. T. Henley's T. Works Co. v. Gorakhpur Electric Supply Co. [1936] A. 840, at pp. 845-846 ; see also Cadiz Water Works Co. v. Barnett [1875] 19 Eq. 82, 31 L. T. 640.
3. London & Paris Banking Corpn. [1875] 19 Eq. 444 ; Doraiswami v. Coimbatore E. S. Nidhi Ltd. [1929] M. 265, 106 I. C. 423 ; Tikam v. Harish [1929] L. 651, 117 I. C. 78.
4. Tulsidas v. Bharatkhand Cotton Mills Co. [1915] 39 Bom. 47 ; Pyda Satyaraju v. Guntur C. I. & Paper Mills [1925] M. 199, 85 I. C. 333.
5. Re a Company [1894] 2 Ch. 349 ; London & Paris Banking Corpn. (supra) ; the Company v. Sir Rameswar [1919] 23 C. W. N. 844 ; see also Niger Merchants Co. v. Capper [1877] 18 Ch. D. 557 n ; re Chic Ltd. [1905] 2 Ch. 345 ; Crigglestone Coal Co. (supra) ; Landauer & Co. v. Alexander & Co. [1919] S. C. 492.
6. King's Cross Dwellings Co. [1870] 11 Eq. 149 ; Great Britain Mutual L. A. Society [1880] 16 Ch. D. 246.
7. Coalfields of Burma v. Johnson [1925] R. 128, 84 I. C. 1021, 2 Rang. 575 following London & Paris Banking Corpn. [1875] 19 Eq. 444.
8. Russian & English Bank [1932] 1 Ch. 663.
9. Bombay House Ltd. [1934] L. 746.
10. Bowes v. Hope Insurance Co. (infra).

shown to have been obtained by collusion, the petition for winding up may be dismissed although the judgment has not been impeached in an action 1.

An order will not be refused on the ground that the judgment is under appeal, unless a stay of execution be obtained 2. But if the judgment be reversed on appeal before the petition for winding up is heard, the petition will be dismissed, although a further appeal may be pending 3.

Debenture holder's right to petition.

A debenture-holder or a debenture-stock holder to whom a company is indebted in a sum presently payable, can demand payment, and if default be made, can petition for winding up the company 4. The mere fact that he has obtained the appointment of a receiver does not preclude him from applying for a winding up order 5. As against the company he is entitled to a winding up order *ex debito justitiæ*, but not so as against the wishes of the majority of the creditors 6. The holder of a mortgage debenture who applies for a winding up order is not bound to give up his security 7.

His other rights.

A debenture holder however is not bound to come in and enforce his rights in a winding up. He may exercise such powers of realization as are given him by his securities, *e.g.*, appointment of a receiver or sale, and where it is necessary to bring an action, he can apply to the Court and the Court will give liberty to bring or proceed with the action as a matter of course, the winding up not withstanding 8. Debenture-holders and debenture-stock holders are entitled as against their securities, whether the company is solvent or insolvent, to take principal, interest and costs 9.

Shareholder's petition.

A petition for winding up made by a shareholder however stands on a different footing. It will be more fully scrutinized. Where the petition proceeds on the ground that the company is unable to pay its debts, it must pay the debt or submit to a winding up order. If the petition allege one of the grounds under clauses (i), (ii), (iii), (iv) and (vi) the Court will, under ordinary circumstances, admit the petition. If any other grounds are alleged, the petition does not satisfy the requirements of the law 10.

Contributory's petition.

A contributory, inorder to obtain an order for winding up, must make out a special case, e. g., that the substratum of the company is gone. The substratum is held to be gone where the main object for which the company was formed has become impracticable 11.

Petition by holders of fully paid shares.

The holders of fully paid shares may apply for winding up as a contributory. But the Court will not be satisfied with the bare statement of a director that the company is unable to pay its debts 12.

See notes to ss. 163 and 166.

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1. United Stock Exchange Co. [1884] W. N. 251 ; cf. *exp.* Q. Lennox [1886] 16 Q.B. D. 315.
2. Amalgamated Properties [1917] 2 Ch. 115.
3. Anglo-Bavarian Steel Ball Co. [1899] W. N. 80.
4. Olathe Silver Mining Co. [1884] 27 Ch. D. 278.
5. Borough of Portsmouth Tramways Co. [1892] 2 Ch. 362.
6. Bowes v. Hope &c. Society [1865] 11 H. L. C. 389, 402 ; Amalgamated Properties (supra).
7. Moor v. Anglo-Italian Bank [1879] 10 Ch. D. 681.
8. Strong v. Carlyle Press [1893] 1 Ch. 268.
9. Re Talbot [1888] 39 Ch. D. 567.
10. Re Pioneer Bank [1915] 39 Bom. 16, 16 Bom. L. R. 508.
11. Suburban Hotel Co. [1867] 2 Ch. App. 737 ; re T. E. Brinsmead & Sons [1897] 1 Ch. 406.
12. Sylhet & Cachar Tea Co. [1866] 2 Ind. Jur. N. S. 94.

The words are not to be read *ejusdem generis.*

Cl. (vi). It was formerly held that the words in this clause should be read as being *ejusdem generis* with the words in the preceding clauses 1. Now it has been authoritatively laid down by the Judicial Committee that the power of the Court under this clause is not confined to cases in which there are grounds analogous to those mentioned in other parts of the section 2. Thus it is just and equitable to wind up a company when its substratum is gone 3 although the majority of the shareholders desire to continue to carry on the business 3 or where the company is a "bubble" company 4, or where there is a complete deadlock in the management of the company's business 5 unless the deadlock is only temporary 6, or where the company was formed to carry on an illegal business 7, or where the company was conceived and brought forth in fraud 8, or if the particular circumstances of a case require it 9. For other cases see Hals. pp. 397-98. The corresponding clause of Act VI of 1882 *viz.*, s. 128 ran as follows: "(e) whenever for any other reason of a like nature the Court is of opinion &c." The change in the present section is in accordance with the later English decisions.

What the Court will consider.

The position of the Court in determining whether it is just and equitable to wind up the company requires a fair consideration of all the circumstances connected with the formation and the carrying on of the company; and the common misfortune which has befallen some shareholders in the company does not involve the consequence that the ultimate desires and hopes of the ordinary shareholders should be disregarded, simply because there is a strong interest in favour of liquidation naturally felt by the preference shareholders 10. No general rule can be laid down as to the nature and circumstances which have to be borne in mind in considering whether the case comes within the phrase "just and equitable" for purposes of winding up. The decisive question must be the question whether at the date of the presentation of the winding up petition there is any reasonable hope that the object of trading at a profit, with a view to which the company has been formed, can be attained. In considering that question the guarantee of the preference shares should be left out of sight, except in so far as it may have biased the evidence on either side 10. It is not the function of the Court to determine the question of the prospects of the company in future on its own views as to the probable success or failure, but to form the best opinion it can upon the evidence of persons given with a practical knowledge of the trade in question and the local conditions where those affect the matter. If at the relevant time there is a reasonable hope of trading over a period of difficulty and emerging out into a region in which the company might reasonably expect to carry on at a profit, there is no sufficient reason why the Court should wind

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1. Anglo-Greek Steam Co. [1866] 2 Eq. 1.; Suburban Hotel Co. (supra); Re Amalgamated Syndicates [1897] 2 Ch. 600; Re Pioneer Bank (supra).
2. D. Davis & Co. v. Brunswick (Australia) Ltd. [1936] P.C. 114, 161 I.C. 539; Loch v. John Blackwood Ltd. [1924] A.C. 783. P.C.: see also Newbridge S.S. Laundry Co. [1917] 1 I.R. 67; B. Cowasji v. Nath Singh Oil Mill Co. [1921] 59 I.C. 524; Standard Aluminium & Brass Works [1929] B. 8, 30 Bom. L.R. 1509; Yenidjie Tobacco Co. [1916] 2 Ch. 426.
3. Haven Gold Mining Co. [1882] 20 Ch. D. 151; German Date Coffee Co. [1882] 20 Ch. D. 169.
4. Anglo-Greek Steam Navigation Co. (supra).
5. Sailing Ship "Kentmere" & Co. [1897] W.N. 58.
6. Yenidjie Tobacco Co. (supra); Furiers Alliance Ltd. [1907] 51 Sol. Jo. 172.
7. International Securities Corpn. [1908] 99 L. T. 581.
8. Yenidjie Tobacco Co. (supra).
9. Mumtaz Bank [1932] L. 571, 138 I.C. 344.
10. D. Davis & Co. v. Brunswick (Australia) Ltd. (supra).

up the company under this clause. Where there is no evidence of persons with practical knowledge of the business in question, the fact that a public officer, whose duty it is to intervene in cases where a company's affairs are not conducted in a sound manner, has not taken action to wind up the company is, of course, not a deciding factor in determining whether a petition for winding up by a contributory should be granted or not, but it is a fact which is deserving of consideration under this just and equitable clause 1.

There is a great difference between a question of positive fact, such as the pecuniary position of a trading company at a particular date, and a question of the prospects of such a company in the future, a matter which must depend on all sorts of views as to the state of world trade, the confidence of the public, the price at which articles can be sold, a matter which depends very largely upon the number of such sales and an infinity of other considerations, very difficult either to summarise or to define (last note, last page).

Instances.

Where there were only three directors and shareholders of a private company and one of them left the country and the remaining two quarrelled among themselves, and there was a deadlock, it was just and equitable that the company should be wound up 2. Where a private limited company is in substance a partnership, circumstances which would justify dissolution of a partnership will induce the Court to exercise its jurisdiction under this clause 3.

Where the capital of a private company is so owned as to make the company in substance a partnership, and one director has purported by means of irregularities to acquire complete control of the company and to exclude the other director or directors from the management, it may be "just and equitable" that the company should be wound up 4.

Where a company was formed to carry out a contract which it had no reasonable probability of carrying out and the moneys of the company had been misapplied by the directors, and the company was so constituted that it was deprived of its usual remedies, it was held that the substratum of the company was gone, and that it was just and equitable that the company should be wound up 5.

Where the managing director of a company had in a chancery action been adjudged to be personally largely indebted to the company and had entered into large contracts with the company, but the company not only neglected to enforce payment but continued him as managing director, passed a vote of confidence in him immediately after the aforesaid judgment and passed another resolution approving of the directors opposing the winding up petition, it was held that the company had so identified and associated itself with the managing director in his misconduct that it was just and equitable that it should be wound up 6.

Where one director can exercise a dominating influence on the management of the company and the managing director can outvote the minority and retain the profits between the members of his family and there are several complaints of irregularity and the rate of dividend is steadily diminishing, there are sufficient

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1. Sudhiya Nath v. Behar National Insurance Co. [1941] 20 Pat. 538.
2. American Pioneer Leather Co. [1918] 1 Ch. 556.
3. Yenidjie Tobacco Co. (supra).
4. Davis & Collett Ltd. [1935] Ch. 693 [the principles of Yenidjie Tobacco Co. (1916) 2 Ch. 426 applied].
5. Bleriot Manufacturing Aircraft Co. [1916] 32 T. L. R. 253; see Cotman v. Brougham [1918] A. C. 514.
6. Newbridge S. S. Laundry & Co. (supra).

grounds for entertaining a winding up petition and for calling upon the directors to enter upon their defence 1.

It is just and equitable to wind up a company when there is a justifiable lack of confidence in the conduct and management of the company's affairs owing to the management being held in one family which is in a position to dominate the other shareholders and monopolize the company's affairs for their own individual benefit 2. But the fact that one of the shareholders has a preponderating voice in the company by reason of his owing or controlling a large number of shares is of itself no reason for winding up the company under this section 3 ; nor is the fact that dividends have not been paid regularly is a ground for such a winding up 3. It is well settled that an *ultra vires* transaction on the part of the directors is of itself no ground for a winding up order, a shareholder having his complete remedy in other directions 3. So where there was no question of deadlock, nor was there any question of shareholders using their voting power for their own commercial interests outside the company in disregard of the interests of a minority, nor again was there any question involved of any improper management of the company by the directors who were in control, and the problem involved was of the nature of a business problem : *held* that if there was at the relevant time a reasonable hope of tiding over the period of deep depression and of emerging into a region in which the company might reasonably expect to carry on at a profit, there would seem to be no sufficient reason why the Court should wind up the company under the "just and equitable" clause 4.

Where a person who had been adjudicated insolvent transferred large estates to a private limited company in which he had 90 per cent. shares, it was held to be just and equitable that the company should be wound up 5.

Onus.

Where a petition is presented for winding up of a company on the ground that it is just and equitable to do so, the onus is on the petitioner 4.

Court should not act under this clause unless there is a strong ground.

The Court has ample jurisdiction to order the winding up of a company where it thinks that it is just and equitable to do so, although the assets would be entirely absorbed in paying off debentures 6. But the power given in cl. (vi) to the Court should not be exercised unless there is a very strong ground for acting upon it, because companies are governed by a majority of their own members, and where there is a domestic tribunal which has powers to decide upon a question, it should, if possible, be left to the domestic tribunal 7. Thus in the case of a company which is not shown to have been conceived and brought forth in fraud or to be one whose substratum is gone, the mere fact that the applicants apprehend that the assets of the company will be frittered away and that loss would result from the company continuing to work, is no ground for winding it up under cl. (vi) 7. Inspite of heavy losses if under a new management a company showed reason to believe that it would shortly be in a sounder position, the Court will not order a winding up 8. So the Court will not order a company to be

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1. Sabapathy v. Sabapathy Press Co. [1925] M. 489, 48 Mad. 448, 48 M. L. J. 118, at a later stage [1930] M. 240, 53 Mad. 38, 120 I. C. 372.
2. Loch v. John Blackwood, Ltd. [1924] A. C. 783 P. C. ; Gopal Chetty v. Ripon Press Co. [1925] M. 633, 48 M. L. J. 232, 86 I. C. 914.
3. Ripon Press &c. Co. v. Gopal Chetti [1932] P. C. 1, 36 C. W. N. 54.
4. D. Davis & Co. v. Brunswick (Australia) Ltd. (supra).
5. M. E. Moolla & Sons v. Chartered Bank [1928] R. 36, 5 Rang. 685.
6. Clandown Colliery Co. [1915] 1 Ch. 369 ; Alfred Melson & Co. [1906] 1 Ch. 841 ; re Chic Ltd. [1905] 2 Ch. 345.
7. Mahamandal S. P. Samiti [1917] 15 A. L. J. 193, 39 I. C. 570.
8. Standard Aluminium & Brass Works (supra).

wound up under this clause by reason of any liabilities not immediately payable, unless it is reasonably certain that the existing and probable assets will be insufficient to meet the existing liabilities, and the Court will not in any case take into account the possible liabilities or profits which may accrue in respect of future business[1]. Where the directors (two elder sons of the deceased member and director) of a private company refused to register the executors (the younger sons of the deceased) in their capacities of beneficiaries under the will of the deceased as member of the company and subsequently refused to supply the latter with copies of the balance-sheet and accounts, it was held that though the principles applicable to the case were those which would be applied in an action for dissolution of partnership, there were no grounds shown in the petition on which it would be "just and equitable" to make a winding up order[2].

Where substratum is gone.

The fact that the firm of the managing agents of a company have been dissolved, but steps have been taken to appoint new managing agents, is no indication of a complete deadlock which can only be removed by winding up the company[2]. In the absence of proof that the objects of a company, as set out in the memorandum, cannot he fulfilled in other ways or by the employment of other agencies, the principle of "substratum gone" cannot be applied[3]. "The substratum is gone when the main purpose has become impossible"[4].

The distinction between failure of substratum of a company and an *ultra vires* act was pointed out by Lord Parker of Waddington in the following words : "The question whether or not a company can be wound up for failure of substratum is a question of equity between a company and its shareholders. The question whether or not a transaction is *ultra vires* is a question of law between the company and a third party"[5]. Where a private company has been formed to pay off the family debts, the shareholders mainly being the members of that family, to bring the company within the "just and equitable" clause it must be shown that the substratum of the company, that is, the family estate, has gone or that a deadlock has arisen in the sense that it is now impossible for the company to carry out the objects for which it was formed[6].

If it appears to the Court on a general perusal of the balance-sheet that the assets of the company are insufficient to satisfy its liabilities, that will enable the Court to order its winding up[7]. Where a bill is dishonoured, this may be a sufficient proof of insolvency[7], although the petitioner had not served a demand requiring payment[8].

Where object is fraudulent.

Where the whole object of a company is fraudulent it may be wound up[9]; but fraud must be specifically alleged and proved[10] and it is not sufficient that it should be stated in the statutory affidavit alone[11]. But in such a case if the question of fraud is tried without objection and the Court directs the winding up on the ground *inter alia* of fraud, the objection cannot be allowed to prevail in appeal[12]. In the last cited case the appellant company, which was not an ordinary commercial concern, was ordered to be wound up by the Privy Council under the "just and equitable clause", as there was ample material upon which the Judges of the High Court might in their discretion reach the conclusion that this company should not be permitted to continue its existence. Fraud towards outside public is however no ground for compulsory winding up 1. The mere fact that there was fraud in the promotion or fraudulent misrepresentation in the prospectus is not of itself sufficient for a winding up order 2.

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[1] European L. A. Society [1869] 9 Eq. 122.
[2] Cuthbert, Cooper & Sons [1937] 1 Ch. 392.
[3] Muralidhar v. Bengal Steamship Co. [1921] 47 Cal. 654.
[4] Per Lord Wrenbury in Cotman v. Brougham [1918] A. C. 514 at p. 522.
[5] Cotman v. Broughan [1918] 514 at pp. 520-21.
[6] Janbazar Manna Estate [1931] C. 692, 58 Cal. 716, 133 I. C. 321.
[7] Bombay Cotton Manufg. Co. [1909] 11 Bom. L. R. 1302.
[8] Globe &c. Steel Co. [1875] 20 Eq. 337.
[9] T. E. Brinsmead & Sons [1897] 1 Ch. 406.
[10] Umakanta v. Dinanath [1901] 28 Cal. 4.
[11] London & Hull Soap Works [1907] W. N. 254.
[12] Bharat Dharma Syndicate [1937] 64 I. A. 143, [1937] All, 566, 41 C. W. N. 746.

Other circumstances.

A company has been wound up under this clause for the purpose of defeating a reconstruction scheme prejudicial to the shareholders 3, or in the case of a deadlock 4. Where the report of the auditors shows that there had been defalcation of certain funds of the company and that attempts were made to cover up the defalcation by various devices, and the contributories level charges of dishonesty and mismanagement against each other, the case is one in which the conduct of some officers of the company would require investigation which can only be obtained in winding up by the Court. In such circumstances considerations of justice and equity are more in favour of a compulsory winding up than voluntary liquidation 5.

No doubt the mere misconduct of directors or of managing agents or the fact that the business of the company has not resulted in profits is not *per se* a ground for winding up; but where the cumulative effect of these facts does demonstrate that the company is insolvent, that its affairs have been mismanaged from the very outset, that debts have been recklessly incurred and never paid, that balance-sheets have not been prepared and published and informations withheld, the company ought to be compulsorily wound up 6.

Ultra vires act.

If a company proceed to do something which is *ultra vires*, a shareholder has a right in an action on behalf of himself and all other shareholders to restrain it, but has no right to come for a winding up order under this clause 7.

Foreign company.

Where an order for winding up has been passed by the Court of principal domicile, it does not mean that a similar order should automatically follow in other Courts having ancillary jurisdiction where similar proceedings for winding up might be pending. Such Courts may on practical considerations find it just and equitable to pass an order for winding up but are not obliged to do so 8.

Persons who can make the petition.

It has been held that the following can make a petition for winding up, *viz.*, the assignee of a debt 9, the depositary by way of mortgage of debentures to bearer the interest of which is in arrear 10, the executor of a deceased life policy holder the sum of the policy being payable out of the assets of the

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1. Medical Battery Co. [1894] 1 Ch. 444.
2. Haven Gold Mining Co. [1882] 20 Ch. D. 151.
3. Consolidated S. R. M. Deep [1909] 1 Ch. 491.
4. Yenidjie Tobacco Co. (supra); American Pioneer Tobacco Co. [1918] 1 Ch. 556.
5. Murray & Co. [1937] O. 377, 168 I. C. 185.
6. Henley's E. Telegraph Works Co. v. Gorakhpur E. Supply Co. [1937] All. 210, [1936] A. 840.
7. Irrigation Co. of France, exparte Fox [1870] 6 Ch. App. 176, 184; but see Amalgamated Syndicate [1897] 2 Ch. 600.
8. Travancore National & Quilon Bank [1939] M. 318.
9. Paris Skating Rink Co. [1877] 5 Ch. D. 959.
10. Olathe Silver Mining Co. [1884] 27 Ch. D. 278.

company 1, and a secured creditor 2 even after obtaining the appointment of a receiver in an action 3.

Contributories' petition.

In the case where a contributory petitions for a winding up, two matters must from first to last be kept in view. The first is the unwillingness of the Court to interfere with the shareholders in the management of their own affairs including the question whether the business shall be continued or not, and the second is that there is in fact jurisdiction in an extreme case to wind up a company at the instance of a contributory, notwithstanding that he is not supported by a majority of the shareholders 4.

Part fulfilment of two or more conditions.

The law requires the fulfilment of one or more of several conditions before an order could be made under this section. The part fulfilment of two or more such conditions should not be taken as having cumulative effect justifying the order. If the Court comes to the conclusion that the main original object for which the company was formed has substantially failed, or that the substratum of the company is gone, it will consider that it would be just and equitable to wind up the company 5. The Court will not be justified in making a winding up order merely on the ground that the company has made losses and is likely to make further losses 6, or that the directors have misapplied the funds of the company 7, or have committed *ultra vires* acts 8.

Company when deemed unable to pay its debts.

163. (1) A company shall be deemed to be unable to pay its debts—

(*i*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, *by causing the same to be delivered by registered post or otherwise* at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or

(*ii*) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part ; or

(*iii*) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay

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1. Bowes v. Hope Life Insurance Society [1865] 11 H. L. C. 389.
2. Catholic Publishing &c. Co. [1864] 33 L. J. Ch. 325 ; Moor v. Anglo-Italian Bank [1879] 10 Ch. D 681.
3. Borough of Portsmouth Tramways Co. [1892] 2 Ch. 362.
4. Bristol Joint Stock Bank Co. [1890] 44 Ch. D. 703, 710 ; see also Standard Aluminium & B. Works [1929] B. 8, 30 Bom. L. R. 1509.
5. Shah Steam Navigation Co. [1908] 32 Bom. 415.
6. *Ibid* ; Langham Skating Rink Co. [1877] 5 Ch. D. 669 ; Kronand Metal Co. [1899] W. N. 15.
7. Bwlch-y-Plwm Co. [1867] 17 L. T. 235.
8. Ex parte Fox [1871] 6 Ch. App. 176.

its debts, the Court shall take into account the contingent and prospective liabilities of the company.

(2) *The demand referred to in clause (i) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by an agent or legal adviser duly authorised on his behalf, or in the case of a firm if it is signed by such agent or by a legal adviser or any one member of the firm on behalf of the firm.*

Amendment.

By the Companies (Amendment) Act, 1936, the original s. 163 has been re-numbered as sub-s. (1), in cl. (i) thereof for the words "by leaving the same" after the words "on the company" the words in italics have been substituted and the new sub-s. (2) has been added. For the effect of the amendments see Introduction.

This section is explanatory to cl. (v) of the last section.

Meaning of "creditor."

The term "creditor" is not limited to one to whom a debt is due at the date of the petition and who can demand immediate payment 1. It includes any contingent and prospective creditor 2. It was held under the former Acts that a garnishee order against a company did not make the garnishor a creditor 3. A person who had a claim against a company for unliquidated damages was not a creditor within this section 4, nor a person who had guaranteed the payment of a due from the company, but had not paid such debt 5. The law was changed by s. 137 of the Act of 1908 corresponding to s. 166 of the present Act which says that "creditor" includes any contingent or prospective creditor.

Meaning of "assignment."

The word "assignment" includes an equitable assignment 6, including an assignment of part of a debt 7. Such an assignee can present a petition for winding up, but if he does so, he must establish the company's insolvency otherwise than by a demand for payment under this section 7. The assignee of part of a debt cannot serve an effective demand under cl. (i), in the absence of the person entitled to the remainder of the debt 7. But such an assignment does operate in equity to transfer the part assigned and it constitutes the assignee a creditor in equity of the original debtor and as such he can, when the debtor is a company, present a winding up petition under s. 166 8.

Statutory demand—Court's duty.

Omission by a company *bona fide* disputing the debt is not neglecting to comply with the statutory demand 9. In such a case if it is not shown that the company will be unable to pay the debt when it has been established by judgment, the Court may dismiss the petition 10, or may order it to stand over until the debt has been so established 11 ; but if the petitioner

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1. Bombay Cotton Manufg. Co. [1909] 11 Bom. L. R. 1302.
2. British Equitable Bond &c. Corpn. [1910] 1 Ch. 574.
3. Combined W. & A. Machine Co. [1889] 43 Ch. D. 99.
4. Pen-y-Van Colliery Co. [1877] 6 Ch. D. 477.
5. Vron Colliery Co. [1882] 20 Ch. D. 442.
6. Montgomery M. S. C. Syndicate [1903] W. N. 121, 19 T. L. R. 554.
7. Steel Wing Co. [1921] 1 Ch. 349 ; Montgomery &c. Syndicate (supra).
8. Steel Wing Co. (supra).
9. London & Paris Banking Corpn. [1875] 19 Eq. 444 ; the Company v. Sir Rameswar [1919] 23 C. W. N. 844 ; see also Niger Merchants Co. v. Capper [1877] 18 Ch. D. 577n. ; re a Company [1894] 2 Ch. 349 ; Gold Hill Mines [1882] 23 Ch. D. 210 ; Crigglestone Coal Co. [1906] 2 Ch. 327.
10. Gold Hill Mines [1883] 23 Ch. D. 210.
11. Catholic Publishing Co. [1864] 33 L. J. Ch. 325.

has already obtained judgment, hearing of the petition will not be stayed, unless the company undertakes to bring an action to set aside the judgment. In the case of *London & Paris Banking Corporation* [1] Sir G. Jessel M. R. said: "If the debt is *bona fide* contested and there is no evidence other than non-compliance with the statutory notice to shew that the company is insolvent and the company denies its insolvency, I ought to dismiss the petition."

What the creditor must prove.

If the creditor relies upon neglect of a statutory notice, he must prove it and prove that it took place before the petition was presented, but may show insolvency in any other way [2]. Thus dishonour of the company's acceptance [3] or the fact that he being a judgment-creditor the company has informed him that he had better not levy, for it has no asset, is enough [4].

Consequences of neglect to pay.

Default in complying with the demand of a creditor gives not only him but other creditors and contributories the right to petition for winding up [5]. Where the statutory demand has not been complied with, the company is unable to pay its debts and there is no reasonable chance of the company resuming its work in the near future, petitioning creditors are *prima facie* entitled to a winding up order [6].

Principle.

The principle upon which a company is to be wound up on the petition of a creditor is simply its inability to pay after proper demand made and the lapse of three weeks. Any such neglect must be judged by reference to the facts of each particular case and when the defence is that the debt is disputed, all that the Court will first see is whether the dispute is on the face of it genuine or merely a cloak of the company's real inability to pay its just debts. [7].

Where the object of the petition is to put pressure on the company to accept terms of settlement in a litigation pending between the company and the creditor, the proper order is to stay the winding up proceeding until the determination of the suit [7]; for it is a well established principle that the Court has inherent jurisdiction to stay proceedings when they amount to an abuse of its process [8].

Rs. 500 limit.

It seems that a creditor for less than Rs. 500 can present the petition under s. 166 where no limit is fixed [9]. But generally the Courts treat the Rs. 500 limit as a guide to the stake which the pititioner ought to have [10]. But where the petition is supported by creditors of more than Rs. 500, the usual order may be made [11].

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[1] [1875] 19 Eq. 444.

[2] Globe &c. Steel Co. [1875] 20 Eq. 337; London & Paris Banking Corpn. (supra).

[3] Catholic Publishing Co. [1864] 33 L. J. Ch. 325.

[4] Flagstaff S. M. Co. [1875] 20 Eq. 268; Yate Collieries Co. [1883] W. N. 171.

[5] Borough of Portsmouth Tramways Co. [1892] 2 Ch. 362.

[6] Sewdayal v. Punjab P. & P. Mills [1930] L. 777, 126 I. C. 185.

[7] Tulsidas v. Bharatkhand Cotton Mills Co. [1914] 39 Bom. 47, 16 Bom. L. R. 692.

[8] The Company v. Sir Rameswar [1919] 23 C. W. N. 844; Gold Hill Mines [1882] 23 Ch. D. 210.

[9] Yate Collieries Co. [1883] W. N. 171; World Industrial Bank [1909] W.N. 148.

[10] Milford Docks Co. [1883] 23 Ch. D. 292, 295; Herbert Standring & Co. [1895] W. N. 99; Fancy Dress Balls Co. [1899] W. N. 109, 43 S. J. 657; see Industrial Insurance Assn. [1910] W. N. 245.

[11] Leyton &c. Cycle Co. [1901] W. N. 225, 50 W. R. 93.

Notice.

The statutory notice under this section is a highly formal and important document and the provision of the Act as to its service upon the company must be strictly complied with 1. Where the registered office of a company still exists at the usual place, but a part of the company's business has been shifted to some other place without any notification of such change to the registrar of companies, the statutory notice must be served at the registered address 1.

Agent's notice of demand.

An advocate's notice 2 of demand or that of any other agent 3 did not before the amendment satisfy the requirements of this section 3. Under the new sub-s. (2) an agent's or a legal adviser's notice is sufficient.

Cl (i) of sub-s. (1) means that the company to be served must, at the time of the service, be in default and that being in default is to be served with a demand under rather special precautions so that if it makes further default for a period of three weeks the question of its inability to pay the debt is set at rest 4. A demand by the solicitors of the creditor not being "under his hand" was not before the amendment sufficient for the purposes of this section 4. The general common law principle *qui facit per alium facit per se* in accordance with the decision in *in re Whitley Partners* 5 did not apply 4. In the last cited case 4 Sir George Rankin, C. J., observed: "The effect of the statutory notice is that unless the debt is paid within three weeks or some arrangement is made with the creditors, the company is in the position of being conclusively estopped from denying that it is unable to pay its debts. It is a highly formal and important document although it is perfectly true that the demand may be made in any terms. It has to be served on the company by leaving the same at its registered office and it has to be a 'demand under the hand' of the creditors. I think that those words must be taken to have a special intention. The intention must be that there can be no doubt at all about such a notice as this being recognized as a notice directly authorized by the creditors, and as one to which will attach or may attach the very serious consequences which the Companies Act imposes."

Judgment debt.

Cl. (i) is general in its terms and has application to all sorts of debts, be it a simple money debt, a mortgage debt or a judgment debt. In the case of a judgment debt, if execution for the recovery of that debt has been taken and has remained unsatisfied, the Court is, in accordance with cl. (ii) bound to presume that the company is unable to pay its debts. Nevertheless the decree-holder is not debarred from making a demand for the payment of the judgment debt by a notice under cl. (i) without having recourse to execution proceedings. In such a case if the demand remains unsatisfied for three weeks, the presumption enjoined by this section necessarily follows 6.

The petition must not be presented until after the expiration of 21 days from the

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1. Janbazar Manna Estate [1931] C. 698, 58 Cal. 716, 133 I. C. 321.
2. Manjeebhai v. Jamal Brothers & Co. [1927] R. 306, 5 Rang. 483; see also Wilson v. Wallani [1880] 5 Ex. D. 155.
3. Kureshi v. Argus Footwear Ltd. [1931] R. 306, 9 Rang. 323, 133 I. C. 483 (per Page C. J.); W. T. Henley's T. Works v. Gorakhpur Electric Supply Co. (infra).
4. Japan &c. Cotton Trading Co. v. Jajodia Cotton Mills [1927] C. 625, 54 Cal. 345, 103, I. C. 629; see also W. T. Henley's T. Works Co. v. Gorakhpur Electric Supply Co. [1936] A. 840.
5. [1886] 32 Ch. D. 337.
6. W. T. Henley's T. Works v. Gorakhpur Electric Supply Co. (supra) at p. 845.

Time limit.

service of the demand [1]. If the company has no registered office, service of the demand may be made at its unregistered office [2]. As to the registered office see notes to ss. 3 and 72.

Where appeal is pending.

Where a judgment has been passed against a company, the Court will not stay proceedings on a winding up petition or refuse order because an appeal is pending, but will usually allow the petition to be suspended if security is given by the company for the amount of the debt and costs [3].

Sub-s. 2. A limited liability company must necessarily act through its officers and authorized agents. The manager of a company must, unless the contrary is proved, be deemed to have the authority to demand and receive payments of the debts due to the company [4].

See notes to s. 162, cl. (v) and s. 166.

Winding up may be referred to District Court.

164. Where the High Court makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding up the company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

Under this section the District Judge has the jurisdiction and powers of the High Court and therefore he has power to order attachment before judgment of property beyond his ordinary jurisdiction [5].

This section does not occur in the English Act.

Transfer of winding up from one District Court to another.

165. If during the progress of a winding up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court having jurisdiction to wind up companies, the High Court may transfer the same to such other Court, and thereupon the winding up shall proceed in such other District Court.

Provisions as to applications for winding up.

166. An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately, *or by the registrar* :

Provided that—

(*a*) a contributory shall not be entitled to present a petition for winding up a company unless—

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1. Catholic Publishing Co. [1864] 33 L. J. Ch. 325, 2 De G. J. & S. 116.
2. Fortune Copper Mining Co. [1871] 10 Eq. 390.
3. Amalgamated Properties of Rhodesia [1917] 2 Ch. 115.
4. W. T. Henley's T. Works v. Gorakhpur Electric Supply Co. (supra).
5. Kanshi Ram v. Hindusthan National Bank [1928] L. 376, 106 I. C. 808.

(*i*) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven ; or

(*ii*) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder ;

(*aa*) *the registrar shall not be entitled to present a petition for winding up a company—*

(*i*) *except on the ground that from the financial condition of the company as disclosed in its balance-sheet or from the report of an inspector appointed under section 138 it appears that the company is unable to pay its debts, and*

(*ii*) *unless the previous sanction of the* [Central Government] *has been obtained to the presentation of the petition :*

Provided that no such sanction shall be given unless the company has first been afforded an opportunity of being heard.

(*b*) a petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held ;

(c) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court.

Amendment. By the Companies (Amendment) Act, 1936, in the first paragraph the words in italics and in the proviso the new cl. (aa) have been inserted. For effect of the amendments see Introduction. In the sub-cl. (i) of the said new cl. (aa) the words within square brackets have been substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into force on 1st April, 1937. But with effect from 1st April, 1938 the functions of the Central Government in this respect have been entrusted to Provincial Governments. *Vide* Gazette of India dated 26th March, 1938, Part I, p. 440.

Who can apply. The following persons can make the application : a creditor whether secured or unsecured 1, an assignee of a debt 2 even if the assignment is only equitable 3, the executor of a creditor 4, holder of a debenture which is presently payable 5 and the holder of a bond which entitles him in consideration of certain periodical payments to the principal sum of money from the company at a future date, such a bond-holder being a "contingent or prospective creditor" 6. A judgment-creditor may petition, although an appeal is pending against the judgment obtained by him 7.

Who can not. The following persons cannot make an application under this section : a person claiming unliquidated damages 8, a judgment-creditor who has attached a debt due from the company to the judgment-debtor 9, a creditor who has so charged or dealt with his debt as to pass the real interest therein to another person 10, a creditor whose debt is attached 11 and the holder of debentures secured by a trust deed 12.

"Creditor." For what the word "creditor" in this section includes see notes to s. 163 *ante.* It includes a contingent or prospective creditor. The right given to policy-holders of a life assurance company to present a petition for winding up the company is given to them because they are prospective or contingent creditors 13. As to the effect of s. 22 of the Life Assurance Act of 1912 replaced by s. 53 of Act IV of 1938 see notes to s. 287 *post.* A company may be wound up compulsorily by the Court on a petition presented by a local authority which is a creditor within this section 14.

Secured creditors. If a secured creditor presents a winding up petition, he does not thereby elect to give up his security or lose his right to it 15. A creditor who cannot get paid without a winding up is entitled *ex debito justitiæ* to a winding up order 16.

The word "contributory" has been defined in s. 158. The holder of fully paid up shares is a contributory 17 and can make the application 18, even if there is

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1. Moor v. Anglo-Italian Bank [1879] 10 Ch. D. 681 ; Borough of Portsmouth &c. Tramways Co. [1892] 2 Ch. 362.
2. Paris Skating Rink Co. [1877] 5 Ch. D. 959 ; London &c. Alkali Co. [1859] 1 De G. F. & J. 257.
3. Montgomery-Moore &c. Syndicate [1903] W. N. 121, 19 T. L. R. 554.
4. Masonic &c. Assurance Co. [1886] 32 Ch. D. 373 (even before probate).
5. Olathe Silver Mining Co. [1884] 27 Ch. D. 278.
6. British E. Bond & Mortgage Corpn. [1910] 1 Ch. 574.
7. Amalgamated Properties of Rhodesia [1917] 2 Ch. 115.
8. Quartz Hill &c. Co. v. Eyre [1883] 11 Q. B. D. 674 C. A. ; Pen-y-Van Colliery [1877] 6 Ch. D. 477.
9. Re Combined W. & A. Machine [1889] 43 Ch. D. 99 C. A.
10. Pentalta Exploration Co. [1898] W. N. 55.
11. European Banking Co. [1866] 2 Eq. 521.
12. Dunderland Iron Ore Co. [1909] 1 Ch. 446.
13. Aryan Life Assurance Society [1938] B. 182, 40 Bom. L. R. 52.
14. North Bucks Furniture Depositories [1939] Ch. 690.
15. Moor v. Anglo-Italian Bank (supra).
16. Western of Canada Oil Co. [1873] 17 Eq. 1 ; Sabapathy Press v. Sabapathy [1930] M. 240, 53 Mad. 38 ; see notes to s. 162 (v) (supra).
17. Anglesea Colliery Co. [1866] 2 Eq. 379, 1 Ch. App. 555 ; Bagdigi K. Collieries v. Jugmohan [1931] C. 391, 58 Cal. 62 ; see Osmondthorpe Society [1913] W.N. 243.
18. National Saving Bank Assn. [1866] 1 Ch. App. 547 ; National &c. Generators [1902] 2 Ch. 34 ; Sabapathy Press Co. v. Sabapathy [1930] M. 240, 53 Mad. 38, 57 M. L. J. 426, 120 I. C. 372.

Meaning of "contributory."

a voluntary winding up 1. But the holder of a share-warrant to bearer cannot make the petition 2. Persons who do not cease to be members for one year or upwards before the commencement of the winding up proceedings are contributories within the meaning this section and are entitled to present a petition for winding up, if their shares are held by them and registered in their names for more than six months preceding the commencement of the winding up 3.

Application by contributory.

Where the application is made by a contributory who is in arrear in the payment of his call, the Court will not as a rule hear the application until the arrears have been paid either to the company or to the Court 4. As to the application by the legal representative of a contributory see notes to s. 158.

Where a contributory makes the application on the ground that the company is insolvent, he must allege and prove that there will be a substantial surplus for the shareholders : otherwise he has no interest which the Court should take into account 5. The Court may also make a compulsory order on the petition of a fully paid shareholder, if satisfied that the voluntary winding up is likely to prejudice the shareholder 6. But the shareholder must show that he will derive some real benefit from a compulsory order 7.

Shareholder's petition.

Where the petition is presented by a shareholder and the allegations made therein all related to the internal management of the company's affairs, it is a matter for the shareholders to deal with and not a matter that will call for interference by the Court 8. The fact that a voluntary winding up is in progress is *prima facie* a bar to the winding up on a shareholder's petition 9, because the shareholder is bound by the wishes of the majority. But the Court has a discretion and if it sees cause will examine the composition of the majority passing the resolution to make sure that it represents the real wishes of the shareholders 10. *Prima facie* a petition by a shareholder alleging that the company has no assets will be dismissed with costs 11.

In a shareholder's petition for winding up the omission to make the statement that the petitioner has held the shares for 6 months before filing the petition does not make the petition demurrable 12. But the registered name of the company must be accurately stated in the advertisement, otherwise the advertisement would be invalid 12. Where the date fixed for hearing as advertised is a holiday, the Court has discretion to dispense with the necessity of publishing fresh advertisement 12. In the last cited case the Court of Appeal discharged the order for winding up to enable the shareholders to meet and decide whether the company should be wound up voluntarily.

A creditor who has presented a petition cannot sell his debt and the right to

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1. National &c. Generators [1902] 2 Ch. 34.
2. Wala Wynaad &c. Co. [1882] 21 Ch. D. 849, 854 ; Positive &c. Assurance Co. [1877] W. N. 23.
3. Mumtaz Bank Ltd. [1932] L. 571, 138 I. C. 344.
4. Crystal Reef Gold Mining Co. [1892] 1 Ch. 408. But see Diamond Fuel Co. [1879] 13 Ch. D. 400.
5. Rica Gold Washing Co. [1879] 11 Ch. D. 36.
6. National &c. Generators [1902] 2 Ch. 34.
7. Doré Gallery [1891] W. N. 98, 35 S. J. 480.
8. Pioneer Bank [1914] 39 Bom. 16, 16 Bom. L. R. 508.
9. Bank of Gibralter & Malta [1865] 1 Ch. App. 69 ; Imperial Bank of China &c. [1866] 1 Ch. App. 339, [1868] 6 Eq. 91.
10. Varieties Ltd. [1893] 2 Ch. 235.
11. Kaslo-Slocan &c. Co. [1910] W. N. 13.
12. City & County Bank [1875] 10 Ch. App. 470.

Creditor cannot sell his right to proceed. proceed with the petition, for it is opposed to public policy 1. The executor of a creditor can make the petition before obtaining probate 2. A creditor cannot utilize his petition for obtaining some pecuniary benefit for himself alone 3.

Third parties have no right. A third party can have no right of action in respect of a contract, unless he possesses an actual beneficial right which places him in the position of *cestui que trust* under the contract 4.

Contents of the petition. There is no obligation whatever on the Court to admit a petition for winding up merely because it is presented. The petitioner must allege facts which, if proved, would justify an order for winding up. But if a petition does not allege such facts, the Judge has a discretion (since the admission of the petition must inevitably damage the company's credit) to consider whether the petition is really a *bona fide* one ; otherwise the door will be laid open to unlimited opportunities for blackmail, especially in times of financial panic 5.

Malicious petition. An action for damages will lie for presenting a winding up petition maliciously and without reasonable cause, though no special damage can be proved 6.

Restraining of petition. The Court will restrain the issuing of advertisements and will not allow the name of the company to transpire when the petition is an abuse of the process of the Court and is made from improper motives 7. On application made in time the Court will restrain the presentation of the petition 8.

In estimating the number of members for the purpose of cl. (a), sub. cl. (i) neither past members nor representatives of deceased or bankrupt members should be taken into account 9.

In cl. (a), sub-cl. (ii) the words "or have been held by him" means standing in the name of the contributory petitioner 10.

Company's name. In petitioning for the winding up it is important to state correctly the name of the company. Even a slight error will render it necessary for the petition to be amended, re-served, re-advertized and again brought before the Court 11.

Affidavit. The petition must be supported by an affidavit made by the petitioner or in a proper case by his solicitor 12.

Who may appear. Only the petitioner, the company, the creditors and the contributories supporting and opposing are entitled to appear on the petition 13. Where several petitions are presented, they rank according to the date of presentation and not according to their dates of advertisement 14. A fully paid shareholder

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1. Paris Skating Rink Co. [1877] 5 Ch. D. 959.
2. Masonic &c. Assurance Co. [1886] 32 Ch. D. 373.
3. Tulsidas v. Industrial Bank [1931] B. 2, 54 Bom. 718, 32 Bom. L. R. 953.
4. Gandy v. Gandy [1885] 30 Ch. D. 57, 67 ; but see Touche v. Metropolitan Ry. Warehousing Co. [1870] 6 Ch. App. 671.
5. Pioneer Bank [1914] 39 Bom. 16, 16 Bom. L. R. 508.
6. Quartz Hill C. M. Co. v. Eyre [1883] 11 Q. B. D. 674 C. A.
7. *Re* a Company [1894] 2 Ch. 349 ; Gold Hill Mines [1882] 23 Ch. D. 210.
8. New Travellers' Chambers v. Cheese [1894] 70 L. T. 271.
9. Bowling & Welby's Contract [1895] 1 Ch. 663.
10. Wala Wynaad Co. [1882] 21 Ch. D. 849.
11. Samuel Birch Co. [1907] W. N. 31.
12. African Farms Ltd., [1906] 1 Ch. 640. See Rule 52 of the fresh Rules framed by the Calcutta High Court printed in the Appendix.
13. New Gas Co. [1877] 5 Ch. D. 703 C. A.
14. *Re* Bamford [1910] 1 I. R. 390; Buildings Societies Trust [1890] 44 Ch.D. 140,144.

is entitled to be heard (last note, last page) but in these matters it is improper to allow the company to fight the battle or the grievances of an individual shareholder 1.

Debenture-holders usually do not appear to oppose the petition, for they have another remedy; but if a winding up would prejudically affect them, this may be a ground for refusing to make the order for winding up 2. Debenture-holders, who oppose a petition by a creditor for winding up the company, must show that there is no possibility of any benefit accruing to the unsecured creditors from an order for the winding up. The unsecured creditors are entitled to ask the Court to pass a winding up order so that the question whether the debentures were *bona fide* issued for value may be enquired into and they may, before it is too late, be able to realize, if not the whole, at least a portion of their unsecured debt 3.

A creditor who has presented a petition for winding up, being *dominus litis*, is entitled on receiving payment of his debt to dismiss his petition at the hearing, but creditors who have appeared in consequence of the advertisement of the petition are entitled to their costs 4.

Procedure.

A petitioner cannot take his case out of the list for hearing without leave of the Court 5. Where a petitioner withdraws his petition, he will be ordered to pay one set of costs to those supporting and one to those opposing the petition 6. For further cases regarding costs see Gore-Browne, 36th ed. pp. 492-93.

The right to petition for winding up a company being a statutory right cannot be excluded by provisions in the articles of association 7.

Contempt of Court.

While a petition for compulsory winding up is pending, it is a contempt of Court to obtain by improper means a resolution for voluntary winding up with a view to mislead the Court as to the real views of the shareholders and thereby induce the Court to abstain from making a compulsory order 8.

The Court will also punish as a contempt an abuse of the occasion, *e. g.*, an advertisement at length of a petition containing charges of fraud 9 or comments on the conduct of the directors published in the public press during the pendency of the petition 10. But it is not contempt to circulate among persons interested arguments or statements regarding the matter before the Court 11.

See notes to s. 162, cl. (v) and s. 163.

As to the petitions for compulsory winding up when the company is already in voluntary liquidation, see s. 218.

Effect of winding up order.

167. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

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1. Bagdigi Kujama Collieries v. Jugmohan [1931] C. 391, 58 Cal. 62, 132 I. C. 633.
2. Western of Canada &c. Co. [1873] 17 Eq. 1.
3. Henley's T. W. Works v. Gorakhpur E. Supply Co. [1937] All. 210,[1936] A.840.
4. Hereford Waggon &c. Co. [1874] 17 Eq. 423.
5. Anglo-Virginian Land Co. [1880] W. N. 155.
6. British Electric Street Tramways [1903] 1 Ch. 725.
7. Re Peveril Gold Mines [1898] 1 Ch. 122.
8. Septimus Parsonage & Co. [1901] 2 Ch. 424.
9. Cheltenham & Swansea Ry. Co. [1869] 8 Eq. 580.
10. Re Crown Bank [1890] 44 Ch. D. 649.
11. New Gold Coast Exploration Co. [1901] 1 Ch. 860.

Operation of winding up order.

A winding up order operates in favour of all the creditors and contributories. Where a sum was recovered by the liquidator from a director for fraudulent trading under s. 275 of the English Act of 1929, (no such provision is in this Indian Act), it was held that the money formed part of the general assets of the company and was not restricted to those creditors with whom debts were contracted during the period of fraudulent trading 1.

Effect of withdrawal of a petitioner.

When a depositor in a company applies for its winding up and other creditors and contributories are allowed by the Court to join with him in prosecuting the case, the petition of the depositor should be considered as a joint petition of all the persons allowed to join, and his withdrawal from the case does not operate as a withdrawal of the whole case. If the original petition is duly verified and signed, the co-petitioners are not debarred from proceeding with the case on account of omission to verify their petitions 2.

Effect of winding up order.

The effect of the winding up order is to stop the running of the statute of limitation in the company's favour 3. It does not however bring the company's business to an end and if the liquidator carries out a contract on the company's behalf, he can recover the consideration 4. If the liquidator has declared his inability to perform the company's contracts, other contracting parties may treat this as an immediate breach of contract and claim damages 5. A manager who having a contract for a term of years has covenanted not to trade in competition with the company is freed from his obligation by the breach of contract caused by the liquidation 6.

Effect on directors' power &c.

The winding up order puts an end to the directors' powers *e. g.*, as to making calls 7 ; but they do not cease to be officers of the company 8. As to the effect on the directors' remuneration, see the case noted below 9.

On agents.

An agreement that an agent shall receive commission upon the sales of the company for a period of years will not however give the agent a right to damages by reason of the company going into liquidation 10. But an agreement that the company shall accept and pay commission upon such orders as the agent shall introduce will give a right to damages ; for this amounts to an express agreement to continue the business 11.

On debenture holders.

On an order for winding up a company debentures and other debts payable at a future date become immediately payable, and leases forfeitable in the event of a winding up are determined 12. Where the company has altogether ceased as a going concern, the debenture-holders are entitled to a charge on all assets, including proceeds of sale of realized assets and uncalled capital, in priority to the claims of unsecured creditors 13.

The liquidators in a voluntary winding up recovered a sum of money alleged to have been paid to a creditor by the company by way of fraudulent preference. A

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1. W. C. Leitch Bros., Ltd. No. 2 [1933] 148 L. T. 108.
2. Dacca Loan Office Co. v. Ananda [1904] 31 Cal. 106.
3. Joint Stock Discount Co.'s Claim [1872] 7 Ch. App. 646.
4. Mersey Steel & Iron Co. v. Naylor, Benzon & Co. [1884] 9 App. Cas. 434.
5. Ogdens Ltd. v. Nelson [1905] A. C. 109.
6. Measures Bros. v. Measures [1910] 1 Ch. 336.
7. Fowler v. Broad's P. N. Light Co. [1893] 1 Ch. 724.
8. Madrid Bank v. Bayley [1866] 2 Q. B. 37.
9. Re South W. of Venezuela Ry. [1902] 1 Ch. 701.
10. R. S. Newman Ltd., Raphael's Claim [1916] 2 Ch. 309.
11. Reigate v. Union Manufg. Co. [1918] 1 K. B. 592.
12. Horsey Estate Ltd. v. Steiger &c. [1899] 2 Q. B. 79 ; Fryer v. Ewart [1902] A. C. 187.
13. Glyn Valley Tramway Co. [1937] Ch. 465.

debenture-holder took out a summons in the liquidation for an order that the money recovered from the creditor should be paid to the receiver of the property charged by the debenture: *held* that the money did not become part of the general assets of the company, but was a sum of money received by the liquidators impressed in their hands with a trust for those creditors among whom the assets of the company were distributable 1.

Commencement of winding up by Court.

168. A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Date of commencement.

If an order is made on more than one petition, the commencement of the winding up dates from the earliest petition 2. If after presentation of a petition for compulsory winding up a resolution is passed for voluntary winding up and then a supervision order is made on the petition, the commencement of the winding up is the date of the resolution and not that of the presentation of the petition 3, even if the supervision order be superseded by a compulsory order 4.

A compulsory order superseding a supervision order may be made not by way of appeal but upon a petition for a compulsory order presented subsequent to the supervision order 5. Where a purely voluntary winding up is superseded by a compulsory order made upon a petition presented after the commencement of the voluntary winding up, the commencement is the date of the presentation of the petition 6.

A voluntary winding up is deemed to commence at the time of the passing of the resolution authorizing the winding up 7.

Disposition of property.

Any disposition of the property of the company made after presentation of the petition for compulsory winding up shall, unless the Court otherwise orders, be void 8. Where after the dismissal of such a petition a lease of a factory for ten years was given by a resolution of a general meeting of shareholders, but in the meantime an order winding up the company was passed on appeal, their Lordships of the Judicial Committee allowed the lease to stand on the ground that as there was no creditor of the company, the only persons interested in the property were the shareholders who have by an unopposed resolution approved of the lease 9. See notes to s. 227.

Court may grant injunction.

169. The Court may, at any time after the presentation of the petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further pro-

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1. Yagerphone, Ltd. [1935] Ch. 392.
2. Kent v. Freehold Land &c. Co. [1868] 3 Ch. App. 493, 494.
3. Weston's case [1869] 4 Ch. App. 20.
4. United Service Co. [1868] 7 Eq. 76; but see Taurine & Co. [1883] 25 Ch. D. 118; Russell Hunting Record Co. [1910] 2 Ch. 78; Havana Exploration Co. [1916] 1 Ch. 8.
5. London & Mediterranean Bank [1866] W. N. 317, 15 L. T. 153.
6. Dawe's case [1868] 6 Eq. 232; see Thomas v. Patent Lionite Co. [1881] 17 Ch. D. 250, and the dissentient judgment of Cotton L. J. in Taurine & Co. (supra).
7. S. 204.
8. S. 227 read with this section.
9. Ripon Press & Sugar Mill Co. v. Gopal Chetti [1932] P. C. I, 36 C. W. N. 54, 54 C. L. J. 439.

ceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

Effects of ss. 153, 169, 171, 268, 269, 273 and 274.

Sections 153 and 169 give the Court, in the interval between the presentation of a petition and an order upon it, a discretionary power to restrain proceedings against the company, and ss. 268 and 273 give the same power against any contributory; while ss. 171, 269 and 274 peremptorily stay proceedings after an order has been made until the leave of the Court has been obtained to proceed with them **1**.

Difference between this section and s. 273.

A difference is to be observed between this section and ss. 268 and 273. Under this section the proceedings to be restrained do not include proceedings against the contributories, for they are not here liable directly to the creditors. The application under this section may be made by the company, creditor or contributory. Under ss. 268 and 273 the proceedings to be restrained do include proceedings against contributories. These sections provide that a creditor only can apply to stay proceedings against a contributory. The result is that proceedings against a contributory can be stayed only on the application of a creditor and not on that of the company or a contributory; but proceedings against the company may be stayed on the application of the company, creditor or contributory, whether the company is formed under the Act, formed otherwise and registered under Part VII of the Act, or be an unregistered company. For as regards an unregistered company the words at the end of s. 276 do not exclude a company as to which there are winding up proceedings pending though no order has been made, and consequently the beginning of the section renders applicable to unregistered companies the whole, except as expressly excepted, of Part V of the Act including s. 169 **2**.

Effect of ss. 222 and 225.

By s. 222 a petition and by s. 225 an order for winding up under supervision are respectively, for the purpose of giving jurisdiction over actions, to be deemed to be a petition and order for winding up by the Court 3.

Effect of ss. 207 and 215.

By s. 207 (now s. 211) in a voluntary winding up the creditors are to be paid *pari passu*, and by s. 215 (now s. 216) the Court may on the application of the liquidator or a contributory or creditor exercise all or any of the powers which it might exercise if the company were being wound up by the Court **3**. Actions, executions **4** and distress **5** may therefore be restrained after a voluntary winding up commenced; but upon the liquidator lies the onus of showing special grounds for staying an action **6**.

Where the application for stay is to be made.

Under the corresponding section (s. 172) of the English Act of 1929, where the action or proceeding is pending in the High Court or Court of Appeal in England or Northern Ireland, the application for stay is to be made to that Court and in any other case to the Court having jurisdiction to wind up the company. But under the present section of the Indian Act the application in all cases is to be made to the latter. The provisions of the English Act have been adopted in the new s. 216.

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1. See Buckley, 10th ed. p. 334.
2. Buckley, 10th ed. p. 334; Rudow v. Great Britain Mutual Society [1881] 17 Ch. D. 600.
3. Black & Co.'s case [1873] 8 Ch. App. 254, 263; Needham v. Rivers Protection &c. Co. [1876] 1 Ch. D. 253.
4. Thomas v. Patent Lionite Co. [1881] 17 Ch. D. 250; Westbury v. Twigg & Co. [1892] 1 Q. B. 77.
5. Roundwood Colliery Co. [1897] 1 Ch. 373.
6. Currie v. Consolidated Kent Collieries [1906] 1 K. B. 134.

Suits and proceedings are stayed.

When a winding up order has been made, no suit or other legal proceeding shall be proceeded with except by leave of the Court [1], and any attachment, distress or execution put in force, or any sale held, without such leave, against the estate or effects of the company after the commencement of the winding up shall be void [2]. But after presentation of the petition and before the winding up order is passed, the jurisdiction of the Court to stay proceedings is discretionary [3]; and in its exercise regard must be had to the primary object of winding up, namely, collection and distribution of the assets *pari passu* amongst unsecured creditors after payment of the preferential debts [4]. In the absence of special circumstances the Court will stay execution and further proceedings [5].

What is a "proceeding."

An execution after judgment has been signed is a "proceeding" and may be restrained [6]. Proceeding to a sale under an execution perfected by seizure before commencement of the winding up is a "proceeding" [7]. The Court however will not, as a rule, restrain a judgment-creditor from reaping the fruits of his action [8]. A distress is a "proceeding" [9] and a landlord will not be allowed to distrain for rent due before the winding up; he must prove his debt like any other creditor [10]. But if the company is a sub-lessee, the superior landlord will be allowed to distrain, for there is no debt in respect of which he can prove [11].

In what case Court will restrain proceedings.

Where the assets have not been actually seized before the petition, the Court will, in the absence of special circumstances, stay proceedings and either restrain the sheriff from seizing or, if he has actually taken possession after the presentation of the petition, will order him to withdraw [4]. When a garnishee order has not been served before the presentation of the petition, the Court will restrain further proceedings [12]. Where a distress has been levied before a winding up, but not completed by sale, the Court has power to restrain proceedings, but will only do so if special circumstances exist rendering a sale inequitable [13]. A landlord will not be allowed to distrain after a winding up, for he is a creditor in respect of such rent and should prove in the winding up [14]. But where a landlord distrains before the winding up for rent payable in advance covering a period after winding up, he can recover the whole amount [15].

When a creditor obtains judgment and issues execution *bona fide*, and the sheriff is actually in possession before presentation of the petition [16], the creditor will not, except under special circumstances, be restrained from realizing [17]; so also if the execution of the writ be only stopped by resistance made to the sheriff's officer [18]. But if a forced sale by the execution-creditor would be ruinous to the company and the other creditors, an injunction may be granted to restrain the sale, a first charge being given to the execution-creditor on the property for his debt and costs 1, or the same rights being reserved to the creditor against the proceeds of the property seized by the sheriff 2.

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[1] S. 171.

[2] S. 232.

[3] Great Ship Co., Parry's case (infra).

[4] Oak Pits Colliery Co. [1882] 21 Ch. D. 322, 329; Black & Co's case [1872] 8 Ch. App. 254, 262.

[5] Bowkett & Fuller's U. E. Works [1923] 1 K. B. 160.

[6] Artistic Colour Printing Co [1880] 14 Ch. D. 502.

[7] Perkins Beach &c. Co. [1878] 7 Ch. D. 371.

[8] Great Ship Co., Parry's Case [1864] 33 L. J. Ch. 245, 4 De G. J. & S. 63.

[9] Exhall Mining Co. [1864] 4 De G. J. & S. 377.

[10] Traders' N. S. Carrying Co. [1875] 19 Eq. 60; Oak Pits Colliery Co. (supra).

[11] Lundy Granite Co. [1871] 6 Ch. App. 462; Regent U. S. Stores [1878] 8 Ch. D. 616.

[12] Stanhope Silkstone Collieries [1879] 11 Ch. D. 160.

[13] Roundwood Colliery Co. [1897] 1 Ch. 373.

[14] Oak Pits Colliery Co. [1882] 21 Ch. D. 322.

[15] Venner's Electrical Cooking v. Thorp [1915] 2 Ch. 404.

[16] Hille India Rubber Co. [1897] W. N. 20.

[17] Great Ship Co. (supra); Withernsea Brick Works [1881] 16 Ch. D. 337; British Salicylates Ltd. [1919] 2 Ch. 155; Ex p. Hawkins [1868] 3 Ch. App. 787.

[18] London Cotton Co. [1866] 2 Eq. 53.

Where a garnishee order is served before the petition is presented, the garnishor becomes a secured creditor 3. But where a garnishee order *nisi* is obtained but not served before the petition is presented, the judgment-creditor does not become a secured creditor and will be restrained from proceeding against the garnishee to enforce the order 4.

If an application for stay is not made promptly after presentation of the petition, and the action goes on to judgment and execution, the order to stay execution may be made only on terms of payment into Court 5.

If there are several actions pending, they may all be stayed on one summons 6.

Rights of the Crown.

The Crown is not mentioned in the section. The Crown is not entitled to priority in payment or to issue process to obtain payment in full in priority to other creditors 7, except as expressly provided by s. 230.

See notes to s. 171.

Powers of Court on hearing petition.

170. (1) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

(3) *Where the Court makes an order for the winding up of a company it shall, except where a liquidator is appointed simultaneously, forthwith cause intimation thereof to be sent to the official receiver.*

Amendment.

The new sub-s. (3) has been added by the Companies (Amendment) Act, 1936. For the object of the amendment see the new s. 171A ,and Introduction.

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1. Hill Pottery Co. [1866] 1 Eq. 649. See also Steel Construction Co. [1936] 40 C. W. N. 312.
2. Plas-yn Mhowys Coal Co. [1867] L. R. 4 Eq. 689 ; Railway Steel & Plant Co. [1878] 8 Ch. D. 183.
3. National U. I. Corpn. [1901] 1 Ch. 950.
4. Stanhope Silkstone Co. [1879] 11 Ch. D. 160 ; cf. Hamer v. Giles [1879] 11 Ch. D. 942 ; Ex. p. Nelson [1880] 14 Ch. D. 41.
5. Everingham v. Co-operative Beer Co. [1880] W. N. 99.
6. People's Garden Co. [1876] 1 Ch. D. 44.
7. H. J. Webb & Co. [1922] 2 Ch. 369, affirmed *sub nom.* Food Controller v. Cork [1923] A. C. 647.

Object & effect of the section.

The object and effect of an order for the compulsory winding up of a company is the closing down of its business. No doubt in order that the assets of the company should be distributed among those entitled to them in the most efficient and fair manner, the Court in some cases may permit the realization of the assets to be suspended temporarily, but for no other purpose. The reason why an order is made that the affairs of a company should be wound up by the Court is because it is deemed expedient that the company should come to an end as a business undertaking. If the general body of creditors are of opinion that it will best serve their interest that an order for compulsory liquidation should be made and the company closed down, their views are entitled to respect. On the other hand if the creditors think that it will be more to their interest that the company should go into voluntary liquidation, again it is primarily a matter for them to decide. But the wishes of the majority of the creditors are not binding upon the Court, though in every case the Court might try to give them serious consideration. It is true as between the creditor and the company as his debtor the creditor who proves insolvency is entitled *ex debito justitiæ* to a winding up order. But the right *ex debito justitiæ* is not his individual right, but his representative right. If majority of the class are opposed to his view and consider that they have a better chance of getting payment by abstaining from seizing the assets, then upon general grounds the Court should give effect to such right as the majority of the class desire to exercise 1.

Former law.

Formerly a winding up order was not, as a rule, made where there were no assets or where all the assets would be taken by the debenture-holders 2. But this section recognizes 3 and gives effect to the decision in *Crygglestone Coal* Co. [1906] 2 Ch. 327. A fully paid shareholder is entitled to an order where the company has no assets and is insolvent 4.

Where the Court will not make the order.

Where it appears that a winding up order will not benefit the petitioner, that nearly all the other creditors oppose the petition and the company is trying to arrange a scheme for reconstruction, the Court will refuse to allow the petition to stand over and may dismiss it with costs 5. Where creditors to a very considerable amount proposed a compulsory winding up and wished it to be voluntarily wound up, Sir John Romilly M. R. said : "I will explain the principle on which I proceed in these cases. Where a creditor applies to wind up one of those companies, especially a limited one, and the company says 'if you allow this to stand over we will supply funds to pay the debt', I am disposed to grant that indulgence. So where a shareholder who applies for the order and the company says 'if you allow it to stand over, the remaining shareholders are ready to advance the necessary money', I allow it to stand over. But here it is admitted that the company must be wound up and the only question is whether it is to be voluntarily or under the Court. I do not know what advance of money can be obtained. I do not know how money can be advanced if the company is to be wound up : the case is very different where it is to be carried on" 6. In *Western of Canada &c* Co. 7 Lord Selborne L. C.

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1. Robson v. Dawson's Bank [1932] R. 75, per Page C. J.
2. Chapel House Colliery Co. [1883] 24 Ch. D. 259 ; Kaslo Slocan Mining Corpn. [1910] W. N. 13 ; Clandown Colliery Co. [1915] 1 Ch. 369.
3. Clandown Colliery Co. [1915] 1 Ch. 369.
4. Kaslo-Slocan &c. Corpn. [1910] W. N. 13.
5. East Kent Colliery Co. [1914] 30 T. L. R. 659.
6. General Rolling Stock Co. [1865] 34 Beav. 314, 315-16.
7. [1873] 17 Eq. 1 at p. 5.

observed : "A very large majority of the debenture-holders think that their interests would be better promoted by delay, and the delay appears to me in the circumstances reasonable."

A winding up order will not be made on a debt which is *bona fide* disputed by the company[1] ; but the Court will see that the dispute is based on substantial grounds. If the petition has been actually presented, it may be either dismissed or stayed[2], and an injunction may be granted restraining the advertisement of the petition[3]. If the petition is ordered to stand over at the request of the company, it will be required to give an undertaking that it will not consent to a winding up order on the petition of another person or to a voluntary liquidation[4].

Adjournment of petition.

A petition will not be adjourned on the ground that an order, if made, will relate back to the presentation of the petition and affect acts done in the interval[5]. But if the petitioner may, by reason of the petition standing over, get paid earlier than he would under a winding up order, an immediate order will be refused[6].

Second petition.

When a creditor is aware that a petition to wind up has been presented, he cannot present a second petition without the risk of having to pay costs[7], even if the first petition be of the company[8]. As regards costs[9] see Buckley, 10th Ed. pp. 349-56.

Persons entitled to be heard.

The only persons entitled to be heard are the company, its creditors and the contributories[10]. The Court may in its discretion hear other persons who have an interest in order to learn what public grounds there are in favour of or in opposition to the winding up[11] ; but such persons cannot appeal[10]. "There can be no doubt really," as observed by Sir George Rankin in the undernoted case[12], "whether or not the wording of the Companies Act uses the word 'contributory' in all cases with exactness, that a fully paid up shareholder has the right to appear and to be heard upon the application to wind up the company. That has been the settled practice of great many years and we have been referred to the cases re *Anglesea Colliery Co.*[13] and re *Rica Gold Washing Co.*[14] which say that a fully paid up shareholder has the right to present a winding up petition. The Companies Act does not, it appears to me, deal directly with the question of who shall be heard at the time when a winding up petition is being tried. If one goes on the ordinary principles it seems to me manifest that a shareholder has an interest in the questions whether the company should be wound up, a receiver appointed over all the assets, its goodwill brought to nothing and its capital, as it very often happens, sold at a ruinous loss." It is not correct to say that creditors appearing on a petition for winding up are entitled to their costs as of right. It is usual to give one set of costs when many appear and when there is a reasonable ground for appearing 1.

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[1] Gold Hill Mines [1883] 23 Ch. D. 210 C. A.
[2] Rhodesian Properties Ltd. [1901] W.N. 130, 45 S. J. 580.
[3] Re a Company [1894] 2 Ch. 349.
[4] St. Neots Water Co. [1905] 93 L.T. 788.
[5] Metropolitan Ry. Warehousing Co. [1867] 17 L.T. 108 ; Ex. p. Hawkins [1859] 28 L.J. Ch. 830 ; Albion Bank [1866] W.N. 388.
[6] Brighton Hotel Co. [1868] 6 Eq. 339 ; Western of Canada Oil Co. [1873] 17 Eq. 1 ; St. Thomas' Dock Co. [1876] 2 Ch. D. 116, 34 L. T. 228.
[7] *Exp.* Rasch [1867] 36 L.J. Ch. 75, 15 L.T. 173 ; Joint Stock Coal Co. [1869] 8 Eq. 146 ; Building Societies Trust [1890] 44 Ch. D. 140.
[8] Standard Cement Co. [1890] W.N. 91.
[9] Vanguard Motor Bus Co. [1908] W.N. 99.
[10] Bradford Navigation Co. [1870] 5 Ch. App. 600, 9 Eq. 80.
[11] Bradford Navigation Co., supra.
[12] Bagdigi K. Collieries v. Jugmohan [1931] C. 391, 58 Cal. 62.
[13] [1866] 1 Ch. App. 555.
[14] [1879] 11 Ch. D. 36.

Costs.

As the advertisement of the petition is an invitation to the creditors and contributories to appear 2, if the petitioner wants to get his petition dismissed he must pay the costs of the former 3. For this reason the petitioner will not be allowed to take his petition out of the list 4; and if when it is called on he elects to get it dismissed, it will be dismissed with costs including those of the creditors who appear 5, whether the persons supporting or opposing the petition are in the right or not 6.

Procedure.

Where a winding up order is made on a petition, it is an order for the benefit of all the creditors and contributories 7, and the petitioner's costs including those of establishing his debt, if disputed, are a first charge on the estate and must be paid in full in priority to any costs of the liquidator 8.

Effect of the order.

A winding up order is not a judgment *in rem*, and a stranger, *e. g.*, a purchaser from the liquidator may dispute its validity 9.

Petition of holder of fully paid share.

An order to wind up a company compulsorily will be made on the petition of a holder of fully paid up shares, notwithstanding that an extraordinary resolution has been passed to wind it up voluntarily 10.

Two companies cannot, for the sake of convenience, be included in one winding up order 11.

It has been held in England that any person who appeared at the hearing can appeal 12, and persons who did not appear at the hearing must obtain leave before they can appeal 13.

Appeal.

Sub-s. (2). As regards the obligation of a company to hold the statutory meeting and to file the statutory report see s. 77.

Suits stayed on winding up order.

171. When a winding up order has been made *or a provisional liquidator has been appointed* no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

The words in italics have been inserted by the Companies (Amendment) Act, 1936.

The object of the section is to prevent all litigation against a company which is

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1. Hall & County Bank [1879] 10 Ch. D. 130.
2. New Gas Co. [1877] 5 Ch. D. 703; Diamond Fuel Co. [1878] W. N. 11.
3. Patent Cocoa Fibre Co. [1876] 1 Ch. D. 617.
4. An Insurance Co. [1875] 33 L. T. 49; Anglo-Virginian Land Co [1880] W. N. 155.
5. Home Assurance Assn. [1871] 12 Eq. 59; Hereford Waggon &c. Co. [1874] 17 Eq. 423.
6. Nacupai Gold Mining Co. [1884] 28 Ch. D. 65; British Electric Tramways [1903] 1 Ch. 725; Patent Cocoa Fibre Co. (supra); but see Jablochkoff Electric Light & Power Co. [1883] W. N. 189, 49 L. T. 566.
7. S. 167.
8. Audley Hall Cotton Spinning Co. [1868] 6 Eq. 245.
9. Bowling & Welby's Contract [1895] 1 Ch. 663.
10. Haycraft Gold Reduction Co. [1900] 2 Ch. 230.
11. Shields Marine Insurance Co. [1867] W. N. 265, 17 L. T. 308.
12. Silkstone Fall Colliery Co. [1875] 1 Ch. D. 38.
13. Securities Insurance Co. [1894] 2 Ch. 410.

Object of the section.

being wound up, except with the consent of the Court, and all proceedings in which the company is either a defendant or a respondent are proceedings against the company. Therefore a revision petition against a company cannot be proceeded with after the winding up order without leave of the Court in which the winding up proceeding is going on 1. But see next para.

Scope.

An appeal or an application for revision arising out of an action brought by a company does not however come within the purview of this section, and such appeal or application can be proceeded with without the leave of the liquidation Court 2. The word "suit" in this section means, as stated in s. 26, C. P. Code, a proceeding which is instituted with the presentation of a plaint in a Court of original jurisdiction. The expression "legal proceedings" in this section is coupled with "suit" and obviously means proceedings *ejusdem generis*, that is to say, original proceedings in a Court of first instance, analogous to a suit, initiated by means of a petition similar to a plaint. It does not include proceedings taken in the course of the suit, nor proceedings arising from the suit and continued in a higher Court like an appeal from an interlocutory order or final order passed in the suit 3. But the Allahabad High Court has held that where a decree in favour of a company has been passed and the judgment-debtor has appealed from the decree and goes on with his appeal at the date of the winding-up of the company, he should be regarded as proceeding with legal proceedings against the company, and he cannot do so without leave of the Court 4. Leave to commence an appeal cannot be granted under this section, where such leave is applied for at a time beyond that at which the commencement of the appeal would become time-barred 5. An appeal against a decree in favorur of a bank was filed within time, but before that the bank had gone into liquidation. On an application under this section to continue the appeal it was held that since the appeal was a proceeding within the meaning of this section, it was not valid and effective as it was instituted without leave and the application for leave must be taken to be one to "commence" and not to "continue" the appeal 6. Leave under this section to commence an appeal after expiry of the period of limitation should not be granted, inasmuch as such leave cannot have the effect of reconstituting the appeal as a valid appeal 6. When once an action by the company in liquidation itself has been proceeded with, and is successful, there is no necessity for the defendant in the action to obtain leave for any defensive proceedings against the company 7. On this point Lord Davey said : "The respondents now objeet that the present appellants cannot proceed with the appeal without the leave of the Court in Ireland. I am of opinion that the objection cannot be maintained. It was the respondents who themselves proceeded with the action after the winding up order, by prosecuting their appeal in the Court of appeal, and when once an action by the company has

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1. Milwa Ram v. People's Bank [1916] 36 I. C. 618.
2. Simla Banking &c. Co. v. Indo-Swiss Trading Co. [1938] L. 754 ; Kishen Singh v. Industrial Bank [1918] 47 I. C. 392, 32 P. L. R. 1918 F. B. ; Humber & Co. v. John Griffiths Cycle Co. [1901] 85 L. T. 141, H. L. ; Bundelkhand M. & C. Agency, [1936] Pesh. 97, 162 I. C. 416.
3. Shakuntala v. Peoples Bank of N. India, [1941] L. 392 F. B., 43 P. L. R. 505.
4. Rajkumar v. Benares Bank [1941] A. 154, [1941] A. L. J. 23, disapproving Kishen Sing v. Industrial Bank supra, explaining Humber & Co. v. John Griffiths Cycle Co., supra.
5. Maharaj Kishore v. Benares Bank [1941] O. W. N. 838.
6. Maharaj Kishore v. Benares Bank [1941] A. 335, 1941 A. L. J. 385.
7. Jiwan Das v. People's Bank of N. India [1937] L. 927.

been proceeded with, there is no necessity for the defendants in the action to obtain leave for any defensive proceeding on their part. The liquidator was either party or privy to the proceedings in the Court of appeal and the respondents having been successful in that appeal cannot now object to the appellants defending themselves against the consequences of the judgment by the ordinary means of an appeal to this House" 1.

Leave under this section to proceed with a pending legal proceeding can only be granted where that proceeding has been instituted prior to the winding up order. The Court has no jurisdiction to give a plaintiff leave to continue a suit which is instituted without the Court's leave subsequent to an order for compulsory liquidation. It has inherent jurisdiction to dismiss the suit on the interlocutory application for leave to continue the suit 2.

Insolvency proceedings.

The provisions of this section are very wide and though an application for discharge of an insolvent may not start independent proceedings, the section would require leave of the High Court even for continuation of the insolvency proceedings already taken 3.

Construction.

The words "or commenced" in this section are not otiose. They were put in to show that no suit could be instituted or other legal proceedings commenced without the leave of the Court after the company had gone into liquidation. The words immediately preceding them, namely, "shall be proceeded with" were put in merely to meet the case of those suits or legal proceedings which were pending at the time the liquidation started. The word "commenced" has been used because a proceeding is usually said to be commenced just as a suit is usually said to be instituted, but the meaning of the two words is the same. This section means that after liquidation has started a suit cannot be instituted and other legal proceedings cannot be commenced, until the leave of the Court is given 4.

Effect of winding up order.

Where a company is being wound up by or subject to the supervision of the Court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company is, unless leave to proceed is given by the Court, avoided altogether 5, so that no interest in any goods seized is acquired even against third persons 6. The Court will set aside a judgment obtained without leave after the winding up order 7. The provision applies to distress for rent 8 or rates 9. A suit or application can only be instituted or made with the leave of the Court 10. But it has been held by the Lahore High Court that where leave has been obtained within the period of limitation, it would be useless to dismiss the suit and compel the plaintiff to bring another suit after obtaining the leave 11. It has however been held by the Calcutta High Court that if after an order for winding up is passed, a suit is instituted against the company, the Court has inherent

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1. Humber & Co. v. John Griffiths Cycle Co. (supra).
2. Harnarain v. Kanhaia Lal [1940] C. 166, [1939] 2 Cal. 425. See Steel Construction Co. [1936] 40 C. W. N. 312.
3. Banwari Lal v. Peoples Bank of N. India [1937] 169 I. C. 625, 39 P. L. R. 717.
4. Peoples Bank of N. India v. Fatehchand [1936] L. 401.
5. Hals. p. 594.
6. Artistic Colour Printing Co. [1882] 21 Ch. D. 510; see New City C. Club Co. [1887] 34 Ch. D. 646 C. A.
7. Harford v. Amicable M. L. A. Co. [1871] 5 I. R. C. L. 368.
8. Higginsshaw M. Spinning Co. [1896] 2 Ch. 544 C. A.
9. Dry Docks Corpn. [1888] 39 Ch. D. 306 C. A.
10. Ali Akhtar v. People's Industrial Bank [1920] 18 A. L. J. 296.
11. Peoples Bank of N. India v. Fatchchand (supra).

jurisdiction to dismiss the suit as incompetent. On an interlocutory application under this section the winding up Court has no jurisdiction to give the plaintiff leave to continue a suit instituted without leave subsequent to the winding up order 1.

Execution.

If execution or process of the nature has been duly levied or put in force before the winding up commenced so as to make the creditor a secured creditor, a stay will be refused or leave to proceed and to sell given 2, unless the liquidator pays the debt 3 or there are special circumstances. Service of a garnishee order *nisi* is, for this purpose, equivalent to execution 4 ; but an order appointing a receiver by way of equitable execution does not *per se* make the judgment-creditor a secured creditor 5. If the writ has merely reached the hands of the sheriff, but he has not seized at the commencement of the winding up, the Court will not, in the absence of special circumstances, allow execution to be levied 7 ; for an execution is not put in force unless possession is taken under it 6. As to a mortgagee submitting to have his rights determined see the case noted below 7.

An attachment of the assets of a company (which is subsequently wound up), which has not been completed by sale, cannot be treated as having been completed before the commencement of the winding up, so as to allow such attachment to prevail over the interests of the body of creditors as a whole 8.

Where in execution of a decree obtained by a company in liquidation certain property has been attached as belonging to the judgment-debtor, and a third person has unsuccessfully objected to the attachment on the ground that the property belonged to him and not to the judgment-debtor, such person cannot bring a suit under Or. 21, r. 63, C. P. Code against the company for a declaration of his title without having first obtained under this section leave of the Court which passed the winding up order 9.

The leave of the Court is essential for the purpose of proceeding to execution even in the case of a decree obtained by the Government ; there is no exception to this section 10.

S. 145, Cr. P. Code.

This section is not meant to override an express enacment in s. 145, Criminal Procedure Code, by which a Magistrate, if satisfied that a dispute likely to cause a breach of the peace exists, is bound to call on the parties to attend his Court and put in their claims as regards actual possession 11.

Where proceedings will be allowed to continue.

Proceedings will be allowed to continue where they are to enforce a mortgage or security upon the company's property, or where the company is a necessary party to an action against other persons, or where an action is the most convenient method of trying a question, or where a shareholder has commenced proceedings for rescission and rectification of the register before the winding up, or where the claim is for specific performance or for recovery of possession 12. Leave to continue a suit against the company

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1. Har Narain v. Kanhaiya Lal [1939] 2 Cal. 425.
2. Re Opera Ltd. [1891] 3 Ch. 260 C. A.
3. Roundwood Colliery Co. [1897] 1 Ch. 373.
4. Stanhope S. Colliery [1879] 11 Ch. D. 160 C. A.
5. Croshaw v. Lyndhurst Ship Co. [1897] 2 Ch. 154.
6. London & Devon Biscuit Co. [1871] 12 Eq. 190.
7. Gaudet Freres Steamship Co. [1879] 12 Ch. D. 882.
8. Rajbari Ice Factory [1936] 41 C. W. N. 597.
9. Shakuntala v. Peoples Bank of N. India [1941] L. 392 F. B., 43 P.L.R. 505.
10. Bank of Behar v. Secretary of State [1932] P. I.
11. S. N. Mukherjee v. Krishna Dassi [1933] C. 433.
12. See Hals. pp. 539-40.

should be given where some question arises which cannot be satisfactorily determined in the winding up proceeding 1.

Where the decree sought to be executed is one assigned by the company since gone into liquidation, the judgment-debtor cannot maintain the objection that the execution proceedings are incompetent for the reason that no leave of the Court was obtained when the company presses no such objection and the judgment-debtor did not take the objection in the Court of first instance 2.

Effect of winding up proceedings in England.

The liquidation Court will restrain a person within its jurisdiction from taking or continuing actions or proceedings out of the jurisdiction 3. Where a company was being wound up by the Court of Chancery in England, all actions brought against it in India were ordered to be stayed in the case noted below 4. But a suit may be brought in the Court of this country against a company that is being wound up in England without leave of the Court of Chancery. The High Court will however in the exercise of its general power stay the proceedings where the circumstances are such as to render it proper to do so 5. Parliament never legislates, unless expressly so mentioned in the statute, respecting colonial or Indian Courts 6. But the fact that the property is out of the jurisdiction does not prevent the application of the Act 7. Where a company has in England been ordered to be wound up, judgment-creditors who have proved will not be allowed to attach property in India belonging to the company 6.

Court's jurisdiction.

The Court has jurisdiction to restrain a British subject from taking proceedings in a foreign Court 8 ; but it cannot take away from a creditor the fruits of judgment *in rem* (*e. g.*, against a ship) obtained by him in a foreign Court, a judgment *in rem* being final against every one including the liquidator 9. This section does not apply to proceedings pending in a foreign Court; the Court can, however, in the exercise of its equitable jurisdiction *in personam*, restrain a respondent properly served in this country from proceeding with an action brought in a foreign Court to enforce a liability incurred abroad; but as against a respondent domiciled abroad a substantial justice is more likely to be attained by allowing the foreign proceedings to continue and in such a case the Court will not, as a rule, exercise that jurisdiction 10.

Under this section leave to proceed with a pending legal proceeding can only be granted where that proceeding has been initiated prior to the winding up order; the Court has no jurisdiction to give the plaintiff leave to continue a suit instituted without leave subsequent to the winding up order 11.

A regular suit brought by an unsuccessful claimant of attached property against a company in liquidation is not a part of the proceedings of execution and therefore can-

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1. Jawahir Singh v. Spinning & Weaving Co. [1918] 47 I. C. 1005.
2. Pabna Dhana Bhandar Co. v. Jagneswar [1933] 37 C. W. N. 909.
3. Re Jenkins & Co. [1907] 51 Sol. Jo. 715.
4. Peitsch v. Commercial Banking Corpn. [1866] 1 Ind. Jur. N. S. 363.
5. Bank of Hindustan &c. v. Premchand Raichand [1868] 5 Bom. H. C. 83.
6. Per Mellish L. J. in Exp. Scinde Ry. Co. [1874] 9 Ch. App. 557, 560.
7. Wanzer Ltd. [1891] 1 Ch. 305.
8. North Carolina Estate Co. [1889] W. N. 53, 5 T. L. R. 328.
9. Minna Craig S. S. Co. v. Chartered Merc. Bank [1897] 1 Q. B. 460.
10. In re Vocalion (Foreign), Ltd. [1932] 2 Ch. 196.
11. Steel Construction Co. [1936] 40 C. W. N. 312.

not be commenced without leave of the liquidation Judge 1. On the other hand leave given to proceed with a suit does not extend to execution 2.

Under this section the Court has a wide discretion in the matter of granting leave. It may grant leave unconditionally, it may grant it on terms or it may refuse it absolutely. But in the exercise of this discretion the Court cannot act arbitrarily or capriciously 3. Where leave had been given to certain creditors to proceed to execution while the winding up proceedings were pending but before winding up order had been made, it was held that the leave to proceed was not affected by the winding up order 4.

When leave has been granted pending the suit, the leave is not to be treated as a nullity and the suit cannot be dismissed on the ground that before it commenced no leave has been obtained 5.

The authority who is responsible to see whether winding up proceedings would be properly safeguarded or not by the granting or withholding of leave is the company Judge. If he thinks that leave may be granted, it is not the business of anybody else except the Court of appeal to say that the leave should not have been granted 6.

Effect of want of knowledge.

A sale of the assets of a company, after winding up order, in execution of a decree passed before the date of that order without the permission of the Court, is voidable at the instance of the liquidator. Want of knowledge of the winding up order does not validate such a sale 7. When the execution Court becomes aware of the winding up, it should refuse to confirm the sale 7.

Disabilities of persons alleged to be contributories.

Persons alleged to be contributories cannot, after the winding up order, be allowed to have recourse to an action for the purpose of having an adjudication upon their liability to pay calls on their shares. Such matters are peculiarly within the jurisdiction of the Court conducting the liquidation and cannot be decided by any other Court 8. But a debtor to a company who is not a member is entitled in an action by the liquidator to recover the amount due from the former, to plead by way of set off that an ascertained sum of money is then due to him and to claim that only such balance, if any, as is due to the company, is recoverable from him 9.

Application for substitution.

An application by a transferee of a decree obtained against a company, which has since gone into liquidation, for substitution of his name as decree-holder under s. 47 (3) C. P. Code must, inspite of the provisions of this section, be made to the execution Court and not the winding up Court. After that the decree-holder is to make his claim to the liquidator 10.

Secured creditor.

A person claiming to be a secured creditor cannot be forced to prove his debt in liquidation, but he can stand outside the winding up proceedings and rely upon his security for whatever it is worth. When such a person asks for leave to sue, the prayer should ordinarily be granted, unless there are special grounds to support the contrary course. But where he stands by for a pretty long time

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1. Bhawani v. Industrial Bank [1919] 50 I.C. 645.
2. Iswardas v. Dhanji Shah [1892] 16 Bom. 644.
3. Punjab Pulp & Paper Mills [1932] L. 475, 38 P.L.R. 555.
4. Sylhet & Cachar Tea Co. [1866] 2 Ind. Jur. N.S. 94.
5. People's Industrial Bank v. Ram Chandra [1930] A. 503, 53 All. 430.
6. Ibid. 7. Baldeo v. United Bank of India [1917] 2 Pat. L. J. 77.
8. Amritsar National Banking Co. v. Mohan Lal [1917] 37 I. C. 791.
9. Meherchand v. Amritsar Bank [1915] 28 I. C. 975.
10. Kashi Prasad v. Union Bank [1919] 17 A. L. J. 464.

after accrual of the cause of action and takes no steps to enforce his security, leave should be granted on terms 1.

Secured creditor's remedy.

Although the winding up Judge has jurisdiction to refuse leave absolutely, it cannot, under colour of refusing leave or otherwise, annul or modify a secured creditor's security or decree. The winding up Judge should refuse leave absolutely only in exceptional cases. Ordinarily he should refuse leave only for such time as may be necessary to enable him in the particular circumstances of each case to determine whether he will direct the liquidator to pay off the claim and thus save unnecessary costs to the estate or whether he will give leave to proceed, or whether he will direct the liquidator to take such steps as may be open to him to get the decree set aside 2. Upon a winding up a debenture-holder is entitled to enforce his charge, even though his debenture has not matured 3. Where properties are ordered to be sold by the winding up Court without prejudice to the rights of the secured creditors to proceed in the usual way, the secured creditor's suit previously permitted to be prosecuted would not be stayed 4. Leave under this section is not given on an *ex parte* application 5.

Where a decree has been obtained under a charge which has not been registered under s. 109 even prior to the winding up application, an application for leave to proceed with the execution thereof will be refused 6.

Waiver by company.

It is competent for a company or its liquidator to waive a plea founded on this section and in such circumstances it is not part of the duty of the Court to put the section into operation 7. But a liquidator cannot waive the bar created by this section in such a way as to require him to admit a claim under a decree rendered inoperative by that bar. A decree obtained against a company after a voluntary winding up has been superseded by a winding up order under supervision of the Court is invalid as it contravenes this section 8.

Voluntary liquidation.

In the case of a compulsory winding up a creditor is debarred from proceeding by way of action, unless he can show special grounds for granting him leave to do so; but in the case of a voluntary liquidation the onus is on the liquidator to show that an order should be made staying an action; for *prima facie* the ordinary tribunal is the proper one to decide upon a claim against the company 9.

"The general practice", observed Lort-Williams J., "with regard to staying executions where there is a voluntary liquidation, has been described by Scrutton, L. J. in *Anglo-Baltic &c. Bank v. Barber & Co.* [1924] 2 K. B. 410 (418). He states the general practice to be to grant an order staying execution for the reason that the execution, if allowed, would necessarily interfere with the distribution of the assets *pari passu*, and that it was only in very special circumstances that the Court would depart from that general practice, such as, for instance, where the judgment-creditor had been induced by a

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1. Punjab Pulp & Paper Mills [1932] L. 475, 33 P. L. R. 555.
2. Hansraj v. Dehra Dun Mussooree E. Tramways Co. [1929] A. 353 F.B., 51 All. 695, 119 I. C. 273. In this connection see the views of Niamatullah J., at p. 363.
3. Wallace v. Universal &c. Co. [1894] 2 Ch. 547 C. A.
4. Hukumchand v. Radhakissen [1925] C. 916, 29 C. W. N. 715.
5. Western &c. Telegraph Co. v. Bibby [1880] 42 L. T. 821; Steel Construction Co. [1935] 39 C. W. N. 1259.
6. Sathgram Coal Co. [1936] 40 C. W.N. 1171.
7. Hill v. B. & K. Theatre Ltd. [1914] S. C. 913.
8. Allahabad Banking & Trading Co. [1928] A. 165, 50 All. 419, 109 I. C. 22.
9. Marwar Bank v. Panna Lal [1915] 19 P. L. R., 27 I. C. 685.

false pretext on the part of the company to postpone the execution as was the case in *Armorduct Manufacturing Co. v. General Incandescent Co.* [1912] 2 K. B. 143" 1.

Where a company has gone into voluntary liquidation it can be sued for debts due by it incurred prior to the liquidation, although the fact that there are liquidators may be material if execution of the decree is sought 2. Under s. 136 of Act VI of 1882 it was held that the language showed that the proceedings in execution were regarded as distinct from the suit for the purposes of that section; therefore the leave given to proceed with a suit was not authority for proceedings taken in execution of the decree in the suit authorized 3.

After a bank had been ordered by the Court to be wound up, a person sued both the voluntary and the official liquidators of the bank for recovery of his pay for his employments by the voluntary liquidators for the period prior to the winding up order; it was held that this section applied to the case and that the suit could not be entertained without the Court's leave 4.

The passing of resolutions for a voluntary winding up does not, like an order for winding up by or under the supervision of the Court, stay any proceedings or invalidate executions or distresses or prevent actions or other proceedings being brought or continued against the company without the leave of the Court. But on an application being made the Court has jurisdiction to stay any action, proceeding, attachment, distress or execution against the company or its estate and effects on such terms as it thinks fit. Until a stay is granted a creditor may commence or continue any such proceedings and the liquidator may obtain a supervision order to protect himself against actions threatened and so save the expenses of applying for the stay of proceedings against the company 5.

In the case of a voluntary winding up, although the commencement of the winding up does not automatically stay proceedings 6, the Court has power under s. 215 (now s. 216) on the application of the liquidator or a creditor or contributory to order a stay 7. But if in an action against a company in voluntary liquidation the liquidator denies liability but shows no special reason why a stay should be granted, the action will be allowed to proceed 8. If an order is made staying an action brought against a company which is already in voluntary liquidation, the plaintiff may be ordered to pay the costs of the application 9. If a distress has been levied by a lessor before the commencement of a voluntary winding up, but has not been completed by sale, the Court will not, at the instance of the liquidator, restrain further proceedings under the distress unless there are special reasons which render it inequitable to allow the distress to go on 10.

Practice.

The practice is that a heavy contested money claim against a company and its agents, where the allegations are that the debt was really a personal debt of the agents which they fraudulently attempted to foist on to the company, is usually left to be decided by a suit 11.

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1. Rajbari Ice Factory [1936] 41 C. W. N. 597.
2. Kothandapani v. Somsundaram [1892] 15 Mad. 97.
3. Iswardas v. Dhanji Shah [1892] 16 Bom. 644.
4. Jiwan Lal v. Radhanath [1917] 37 I. C. 427.
5. Marwar Bank v. Panna Lal (supra).
6. East India Bank [1866] 1 Ind. Jur. N. S. 330.
7. Westbury v. Twigg &c. Co. [1892] 1 Q. B. 77; Eastern Investment Co. [1905] 1 Ch. 352; see notes to s. 216.
8. Currie v. Consolidated K. C. Corpn. [1906] 1 K. B. 134.
9. Freeman v. General Publishing Co. [1894] 2 Q. B. 380.
10. Roundwood Colliery Co. [1897] 1 Ch. 373.
11. Maneklal v. Saraspur Manufacturing Co. [1927] B. 167, 29 Bom. L. R. 253.

Creditors not to change their position. An unsecured creditor cannot be turned into a secured creditor after winding up by granting him specific performance of an agreement to create a charge. A rigid line is drawn at the winding up and creditors should not be allowed to change their position after the date of commencement of the winding up 1.

Rights of Crown. The effect of this section is not to restrict any of the rights to recover debts due to the Crown which it may possess by virtue of its prerogative 2. But the Patna High Court in a later case has held that there is no exception to this section and the leave of the Court is essential for the purpose of proceeding to execution even in the case of a decree obtained by the Government 3. Where income tax is justly and legally leviable there will be no difficulty in obtaining leave of the Court to enforce payment of the tax 4. See notes to s. 230.

Limitation ceases to run. The liquidator being a trustee for the creditors, time to recover a debt due from the company does not run after an order or resolution for winding up. The date for testing the liability is the commencement of the winding up 5.

Applicability of section. This section applies to liquidation under the Court's supervision as well as to liquidation by the Court 5. The liquidators cannot waive the bar created by this section in such a way as to require them to admit a claim under decree rendered inoperative by that bar 6.

Court's discretion. An appellate Court does not ordinarily interfere with the discretion of a Court in the matter of granting leave to continue an action against a company which is being wound up; but where the order of the Court is wholly wrong, it will not be sustained 7.

Vacancy in the office of liquidator.

171A. (1) *For the purposes of this Act, so far as it relates to the winding up of companies by the Court, the term "official receiver" means the official receiver attached to the Court, or, if there is no such official receiver, then such person as the [Central Government] may, be notification in the [Official Gazette], appoint for the purpose.*

(2) *On the making of a winding up order, the official receiver shall become the official liquidator of the company and shall continue to act as such until his further continuance is terminated by an order of the Court.*

(3) *The official receiver shall as such official liquidator forthwith*

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1. Maneklal v. Saraspur Manufacturing Co., supra.
2. West Laikdih Coal Co. [1926] 53 Cal. 328, per Page J.; Secretary of State v. Bombay Landing & Shipping Co. [1868] 5 Bom. H. C. 23; Henley & Co. [1878] 9 Ch. D. 469; but see Food Controller v. Cork (infra).
3. Bank of Behar v. Secretary of State [1932] P. 1, following Food Controller v. Cork [1923] A.C. 647.
4. Commrs. of Income Tax v. O.L. Agra Spinning & Weaving Mills [1934] A. 170, [1934] A.L.J. 221.
5. Upper India Rice Mills v. Jaunpur Sugar Factory [1927] A. 161 F.B., 25 A. L. J. 277, 49 All. 520.
6. Allahabad Union Bank [1928] A. 165, 26 A. L. J. 131, 50 All. 419; see also s. 225, cl. (2).
7. Amritsar National Banking Co. v. Mohan Lal [1917] 37 I. C. 791.

take into his custody and control all the books, documents and the assets of the company.

(4) The official receiver shall be entitled to such remuneration as the Court shall fix.

Amendment.

This section is new. It has been introduced by the Companies (Amendment) Act, 1936, as inconvenience was experienced through the office of official liquidator remaining vacant after a winding up order had been made. This section is designed to secure that a public official shall automatically become the liquidator until some other person is appointed by the Court and can undertake the work. In sub-s. (1) the words within square brackets have been substituted for the words "Local Government" and "local official Gazette" respectively by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937. But with effect from 1st April, 1938, the Central Government has entrusted its functions under the said sub-section to Provincial Governments. See Gazette of India dated 26th March, 1938, Part I, p. 440.

Copy of winding up order to be filed with registrar.

172. *(1) On the making of a winding up order it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the registrar a copy of the order within a month from the date of the making of the order.*

(2) On the filing of a copy of a winding up order, the registrar shall make a minute thereof in his books relating to the company, and shall notify in the [*Official Gazette*] that such an order has been made.

(3) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

Amendment.

By the companies (Amendment) Act, 1936, for the original sub-s. (1) the new sub-s. (1) has been substituted. In sub-s. (2) the words in italics within square brackets have been substituted for "local official Gazette" by the Government of India (Adaptation of Indian Laws) Order 1937. For effect of the amendment see Introduction. The original sub-s. (1) was as follows :

Copy of winding up order to be filed with registrar.

172. (1) On the making of a winding up order, it shall be the duty of the company forthwith to file with the registrar a copy of the order, and the petitioner in the winding up proceedings may so file a copy.

Notice of discharge to servants.

Sub-s. (3). An order for compulsory winding up has the same effect as a notice of discharge given on the day when the winding up order was made and servants are not entitled to payment in full in priority of other creditors [1]. The order however operates as a wrongful dismissal of the servants of the company and damages are allowed for breach of contract of service [2]. The reason for holding such an order to operate as a notice of discharge is that it changes the personality of the employer *i.e.*, substitutes the liquidator for the company [2].

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[1] Chapman's case [1866] 1 Eq. 346.

[2] Midland C. D. Bank v. Attwood [1905] 1 Ch. 357 ; but see Reigate v. Union Manufacturing Co. [1918] 1 K. B. 592.

In voluntary winding up.

The decisions as to whether a voluntary winding up operates as a dismissal of servants are conflicting, but the better opinion is that it does not 1.

As to the priority of payment of the servants' wages or salaries in liquidation, see s. 230 and notes.

Power of Court to stay winding up.

173. The Court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Where the order is made.

The power to make an order for the stay of proceedings under a voluntary winding up has been given to the Court by this section read with s. 216 2. The winding up proceeding will not be stayed on the application of the company alone 3, or of an alleged contributory who does not admit himself to be a contributory 4. In dealing with such an applicatian for stay of proceedings the Court has to see whether a stay will be conductive or detrimental to commercial morality and to the interests of the public at large 5.

An application for stay is frequently made when a re-organization under s. 153 or a reconstruction is contemplated 6 ; but the Court will refuse consent, if the directors' conduct require investigation 7.

Where not.

In exercising its jurisdiction to stay proceedings the Court would, so far as possible, act upon the principles which are applicable in exercising jurisdiction to rescind a receiving order or annual an adjudication in bankruptcy against an individual, in which case the Court refuses to act upon the mere assent 8 of the creditors and considers not only whether what is proposed is for the benefit of the creditors but also whether the rescission or annulment will be conducive or detrimental to commercial morality or to the interest of the public at large 7.

What the Court will consider.

In refusing or postponing a stay of winding up proceedings the Court will have regard to the following facts :—(a) That the directors have not complied with their statutory duties as to giving information to the official receiver or furnishing a statement as to the affairs of the company ; (b) that there has been an undisclosed agreement between the promoter and the vendor as to the participation by the former in fully paid up shares forming the consideration for the purchase of property by the company on its formation ; (c) that the promoter has made gifts of fully paid shares to the directors ; (d) that there are any other matters connected with the promotion, formation or failure of the company or the conduct of its business or affairs which appear to the Court to require investigation 8.

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1. See last page, note 2.
2. Eastern Investment Co. [1905] 1 Ch. 352 ; Punjab Co-operative Bank [1919] 49 I. C. 412 ; "Steamship Titan" Co. [1888] W.N. 17, 58 L.T. 178 ; Schanschieff &c. Syndicate [1888] W. N. 166.
3. Re Baxters Ltd. [1898] W.N. 60.
4. Continental Bank [1867] 15 W. R. (Eng.) 548, 16 L. T. 112.
5. Punjab Co-operative Bank (supra).
6. See Marine Investment Co. [1873] 8 Ch. App 702 ; Western of Canada Oil Co. [1873] 17 Eq. 1.
7. Cf. re Hester [1888] 22 Q. B. D. 632 ; re Flatau [1893] 2 Q. B. 219 ; re Izod [1898] 1 Q.B. 241.
8. Telescriptor Syndicate [1903] 2 Ch. 174.

The jurisdiction may be used to allow under proper circumstances a resumption of business [1] or for continuing the liquidation for certain purposes only [2].

Where time is running under s. 217 (now ss. 208E and 209H) towards the moment when the company will be dissolved and there is good reason for preventing dissolution, the result may be achieved by an order under this section [3].

Court may have regard to wishes of creditors or contributories.

174. The Court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Court's power when exercised.

The section applies as soon as a petition for winding up has been presented [2]. The wishes of the majority of the creditors are not binding upon the Court, though in every case the Court might try to give them serious consideration [4]. The Court may disregard them where a single person has a controlling interest [5] or where the majority consist of persons whose conduct is impugned [6], or where the scheme of reconstruction suggested by the creditors is entirely illusory and unpractical and is in essence but a scheme for the voluntary liquidation of the company [7]. The rule that the opinion of the creditors and shareholders regarding carrying on the liquidation should be followed as generally applied in England should not apply so strictly to India. Limited liability companies in India are in their infancy. Shareholders and creditors are easily misled. Fraudulent directors have no difficulty in this country in deceiving shareholders and creditors. While the opinion of the latter undoubtedly ought to be taken into consideration, these classes of persons in India at present require to be protected against themselves. Hence even though the creditors and shareholders agree that the liquidation should be carried on by certain directors who themselves are indebted to the company, the Court can order compulsory liquidation where it finds that those directors are not doing their work of collecting debts properly [8]. For other cases see notes to s. 183.

Creditors.

The word "creditors" does not necessarily mean a majority of the creditors, and in very exceptional cases a creditor's right to a winding up order may be displaced by special circumstances urged by a minority of creditors [9]. The Court will have regard to the wishes of the majority in value of the creditors and if, for some good reason, they object to a winding up order, the Court in its discretion may refuse the order [10]. But if the facts disclose a strong *prima facie* case for investigation into the formation or promotion of the company or the issue of debentures by it, the Court will make a compulsory order irrespective of the creditors' opposition [11].

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1. South Barrule &c. Co. [1869] 8 Eq. 688 ; Marine Insurance Co. [1873] 8 Ch. App. 702.
2. Western of Canada Oil Co. [1873] 17 Eq. 1.
3. Eastern Investment Co. [1905] 1 Ch. 352.
4. Robson v. Dawson's Bank [1932] R. 75.
5. Medical Battery Co. [1894] 1 Ch. 444.
6. Varieties Ltd. [1893] 2 Ch. 235.
7. Sewdyal Ramji Das & Co. v. Punjab Pulp & Paper Mills [1930] L. 777, 126 I. C. 185.
8. Madan Gopal v. Peoples Bank of N. India [1935] L. 779, 16 Lah. 1029, 158 I. C. 816, Special Bench (Young C. J., Addison & Teckchand JJ.)
9. Oilfields &c. Corpn. [1915] 59 Sol. Jo. 475 C. A.
10. Western of Canada Oil Co. (supra) ; Chapel House Colliery Co. [1883] 24 Ch. D. 259.
11. Re Bishop & Sons [1900] 2 Ch. 254 ; re Lichtenstein & Co. [1907] 23 T.L.R. 424.

Contributories. If the company is solvent, the wishes of the contributories as the persons chiefly interested in the assets carry most weight, and if the company is insolvent, the wishes of the creditors [1]. In the case of a company where assets are entirely covered by debentures, the wishes of the unsecured creditors must be regarded in preference to those of the secured creditors [2].

Where the section will apply. The section may be used for the purpose of re-summoning the statutory "first meeting" of creditors and contributories [3]. It is not confined to questions arising after the winding up order, nor to the manner in which, or the terms upon which, an order shall be made, but is equally applicable before the order, when the petition is before the Court [4]. It gives the Court complete discretion to refuse an order [5], or to direct the petition to stand over [6] upon terms [7], and to exercise its discertion with reference to all the surrounding circumstances [8] and the Court may disregard the result of the meeting [8]. For the purpose of this section a fully paid up shareholder is in an entirely different position from a creditor or a contributory who is still liable for calls. "For the purpose of giving value to a mere desire of a contributory or shareholder the position of fully paid up shareholder may be one of comparative unimportance" [9].

The wishes of the creditors and contributories are ascertained in the manner laid down in s. 239.

Cases in which the question arose of giving weight to the wishes of the creditors and contributories have been collected in Buckley, 10th ed. pp. 362-65.

Official Liquidators.

Appointment of official liquidator. **175.** (1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a person or persons *other than the official receiver* to be called an official liquidator or official liquidators.

(2) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up *but shall before making aay such appointment give notice to the company, unless for reasons to be recorded it thinks fit to dispense with notice.*

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1. See note 10, last page and T. E. Brinsmead & Sons [1897] 1 Ch. 45, affirmed [1897] 1 Ch. 406.
2. Crigglestone Coal Co. [1906] 2 Ch. 327, 333 ; East Kent Colliery Co. [1914] 30 T. L. R. 659.
3. See Radford & Bright [1901] 1 Ch. 272 & 735.
4. See note 10, last page.
5. Langley Mill Co. [1871] 12 Eq. 26 ; Planet Benefit &c. Building Society [1872] 14 Eq. 441, 450 ; Uruguay Central Ry. Co. [1879] 11 Ch. D. 372, 383 ; Chapel House Colliery Co. (supra).
6. Brighton Hotel Co. [1868] 6 Eq. 339 ; Western of Canada Oil Co. (supra).
7. St. Thomas' Dock Co. [1876] 2 Ch. D. 116 ; St. Neots' Water Co. [1905] 93 L. T. 788.
8. Land Development Assn. [1892] W. N. 23.
9. Per Sir George Rankin C. J. in Bagdigi Kujama Collieries v Jugmohan [1931] C. 391, 58 Cal. 62, 132 I C. 633.

(3) If more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act by this Act required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons.

(4) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment.

(5) The acts of an official liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment : Provided that nothing in this sub-section shall be deemed to give validity to acts done by an official liquidator after his appointment has been shown to be invalid.

(6) A receiver shall not be appointed of assets in the hands of an official liquidator.

By the Companies (Amendment) Act, 1936, the words in italics have been inserted in the section.

What the Court will have regard to.

The Court in appointing a liquidator will have regard to the wishes of the creditors 1. Where a majority in number vote one way and a majority in value the other way, the Court will decide the question 2.

Who may be appointed liquidator.

The liquidator should be a disinterested person. As a general rule the appointment of a shareholder or a creditor would be improper 3. The secretary of the company being cognizant of its affairs is however a proper person 4. But where there are matters requiring investigation an independent person will be appointed.

Where a mortgagee has obtained an order for a receiver, it is not reasonable that there should be two persons, each of them responsible to the Court, the one as receiver and the other as liquidator ; the practice in such cases is to appoint the liquidator receiver, or allow him to act as receiver, even though a receiver has been appointed before 5. But where there are substantially no outstanding assets, the mortgagee's receiver will not be displaced 6. On the other hand if the mortgagee appoints his own receiver under the power in his security, he is entitled to possession and the Court cannot interfere with his possession. In such a case the Court would, under proper safeguards, direct the liquidator to give possession to the mortgagee's receiver 7.

Where the memorandum of association of a company shows that one of the objects of the company is to manage estates, it entitles the company to act as a liquidator of

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1. Assn. of Land Financiers [1878] 10 Ch. D. 269.
2. Bloxwich Iron and Steel Co. [1894] W. N. 111, 38 S. J. 546 (opinion of the majority in value was given effect to).
3. Northumberland &c. Banking Co. [1858] 2 De G. & J. 508.
4. London & Australian Agency [1873] 29 L. T. 417.
5. Campbell v. Compagnie Generale [1876] 2 Ch. D. 181 ; Tottenham v. Swansea &c. Co. [1884] W.N. 54, 51 L.T. 61; Willmott v. London Celluloid Co. [1885] W.N. 29, 52 L.T. 642; Joshua Stubbs Ltd. [1891] 1 Ch. 187, 475; Perry v. Oriental Hotels [1870] 5 Ch. App. 420; Strong v. Carlyle Press [1893] 1 Ch. 268; Giles v. Nuthall [1885] W.N. 51.
6. Joshua Stubbs Ltd. (supra); Strong v. Carlyle Press (supra).
7. Pound, Son and Hutchins [1889] 42 Ch. D. 402.

another company; and after the company having been appointed a liquidator and having accepted the position, the legality of the appointment cannot be questioned in proceedings of an order for payment under s. 186 1.

Court has discretion.

The appointment of any person as an official liquidator is so entirely a matter for discretion of the liquidation Judge that an appellate Court will not reverse his decision except under very special circumstances, or unless it can be shown that the Judge has acted on a wrong principle 2. This section does not make it obligatory on the Court to comply with the wishes of the majority of creditors 2.

Where a company has to admit that it has in all its branches suspended business and that it must inevitably go into liquidation, the Court is fully justified in taking action under this section and in appointing a provisional liquidator 3.

Premium on security bond.

In an unreported case 4, Sir George Rankin, C. J., and C. C. Ghose, J, have held that when a liquidator gives a security bond by a guarantee society, the premium should not be paid out of the assets of the company. In this case their Lordships also discussed the principles governing the remuneration of liquidators.

Liquidator's duty.

It is wrong to assume that a private company need not be regarded as a corporation distinct from the persons composing it, and that irregularities in connection with its liquidation which in the case of a public company would be most serious are venial and perhaps even permissible. The duties and responsibilities of the liquidator are as serious in the liquidation of a private company as of any other 5. A person who has been appointed liquidator ought not, after such appointment, to continue to act as a Vakil of a creditor whose right to prove against the company is in dispute in the liquidation 6. The liquidator appointed *pendente lite* has no right to contest the order directing the compulsory winding up 7. A provisional liquidator has no right to appear on the hearing of the petition 7.

Appointment of provisional liquidator.

A provisional liquidator is not generally appointed before the hearing of the petition unless the company is shown to be insolvent 8, or unless the petition is presented by the company itself or shown to be unopposed 9. But in a case of urgency the Court would make such appointment upon his undertaking to give security forthwith 10.

The appointment of a provisional liquidator is not only provisional but contingent, for it operates to protect the property for an equal distribution only in the event of an order for compulsory winding up being made. If no such order is made, the appointment ought not to interfere with the rights of third parties 11.

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1. Shanti Lal v. Lyallpur Bank [1936] L. 276.
2. Noble v. Bank of Burma [1912] 17 I. C. 853; Perry v. Oriental Hotels Co. [1870] 5 Ch. App. 420; M. E. Moolla and Sons v. Chartered Bank [1928] R. 36, 5 Rang. 685.
3. People's Bank of India v. Narain Das [1913] 21 I. C. 577.
4. A. O. D. No. 100 of 1928, Alexander v. Hales, decided on 8th April, 1929.
5. Ditcham v. Miller [1931] P. C. 203, 134 I. C. 324.
6. West Hopetown Tea Co. [1887] 9 All. 180.
7. General International Agency Co. [1867] 36 Beav. 1.
8. Railway Finance Co. [1866] 14 L. T. 557.
9. Cilfoden B. B. Society [1868] 3 Ch. App. 462; Emmerson's case [1866] 2 Eq. 231, 236; Railway Finance Co (supra).
10. Hammersmith Town Hall Co. [1877] 6 Ch. D. 112.
11. Dry Docks Corpn. [1888] 39 Ch. D. 306, 314.

Fiduciary position. The liquidator as occupying a fiduciary position must not make any secret profit out of his office 1.

Directors' right to appeal. After the winding up order the directors cease to be such and the managing director has no *locus standie* to appeal against an order appointing an official liquidator or an order refusing re-hearing of the appointment proceeding 2.

Resignations, removals, filling up vacancies and compensation.

176. (1) Any official liquidator may resign or be removed by the Court on due cause shown.

(2) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court *and until the vacancy is so filled up the official receiver shall be and act as the official liquidator.*

(3) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

The words in italics have been inserted by the Companies (Amendment) Act, 1936.

Removal of liquidators. Though the Court may have a general discretion of removing the liquidator, its jurisdiction is not confined to cases where there is personal unfitness in the liquidator; but it extends to cases where the unfitness is occasioned by his connection with other parties or by circumstances of the particular case 3. Whenever the Court is satisfied that it is for the general advantage of those interested in the assets of the company that a liquidator should be removed, it has power to remove him and appoint a new one 4.

Meaning of "due cause." As to what is "due cause" in sub-sec. (1) see *North Molton Mining Co.* 5 where the liquidator became insane; *Scotch Granite Co.* 6 where he left England and delegated his duties to others; *Tavistock Iron Works Co.* 7 where he insisted on continuing proceedings against the wishes of the majority of the creditors; *Devonshire Silktone Co.* 8 where the liquidator's interest clashed with his duties; *Rubber and Produce Insventment Trust* 9 where he continued proceedings at the wish of the contributories after it had appeared that only the creditors were interested. The measure of "due cause" in this section is the real, substantial and honest interest of the liquidation. Where the circumstances suggested that it was not

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1. Silkstone &c. Coal Co. v. Edey [1900] 1 Ch. 167; Devonshire Silkstone Coal Co. [1878] W. N. 71.
2. South Indian Mills v. Shiva Lal [1916] 2 M. W. N. 250, 36 I. C. 617, [Fowler v. Broad's P. N. Light Co. [1893] 1 Ch. 724 and Measures Bros. v. Measures [1910] 1 Ch. 336 applied].
3. Charterland Gold Fields [1909] 26 T. L. R. 132; see also Karamelli v. Barnett Ltd. [1917] 1 Ch. 203.
4. Adam Eyton Ltd. [1887] 36 Ch. D. 299 C. A.
5. [1886] 34 W. R. 527, 54 L. T. 602.
6. [1867] 17 L. T. 533.
7. [1871] 24 L. T. 605.
8. [1878] W. N. 71, 173.
9. [1915] 1 Ch. 382.

in such interest of the liquidation that the present liquidator should be removed, the Court declined to make the order even if the liquidator was clearly guilty of neglect in carrying out the specific orders of the Court and the specific Rules which have been laid down by the High Court 1.

Who can apply for removal.

A contributory or a creditor can apply for the removal of a liquidator, but not an outsider 2. A contributory in arrear as to his calls cannot however apply for a liquidator's removal 3.

In case of supervision order.

If a supervision order is made and the company is insolvent, the Court may give effect to the wishes of the creditors by removing a voluntary liquidator 4.

A liquidator may appeal from an order for his removal 5.

Remuneration of liquidator.

As a general rule when the liquidator applies for exceptional remuneration, the registrar should see that the creditors of the company have specific notice of the application, so that the circumstances may be discussed and the figures properly checked 6. The practice as to the remuneration is generally to adopt as a guide the scale applicable to trustees in bankruptcy which is on a percentage basis 7. But the remuneration is to be considered in each case according to its particular circumstances 8. It has been held that the Court will not interfere to determine the proportion in which the remuneration ascertained to be due to joint liquidators shall be divided between them 9.

The official liquidator is not entitled to receive anything out of the assets of the company by way of remuneration until all the costs of the winding up including the solicitor's bill have been paid in full 10.

There is a fiduciary relationship between the liquidator on the one side and the shareholders and creditors on the other. He cannot therefore receive remuneration beyond what is allowed by statute or the Rules, even though being a solicitor he conducts proceedings on behalf of himself and his co-liquidator in the process of winding up 11.

Official liquidator.

177. The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name.

Statement of affairs to be made to the liquidator.

177A. (1) *Where the Court has made a winding up order or appointed an official liquidator provisionally, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official liquidator a statement as to the affairs of the company verified by an affidavit and containing the following particulars, namely :—*

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1. Pabna Dhanabhander Co. [1936] 40 C. W. N. 857.
2. New de Kaap Ltd. [1908] 1 Ch 589.
3. Norwitch &c. Society [1879] W. N. 216, 49 L. J. Ch. 187.
4. North Melton Mining Co. (supra).
5. Adam Eyton, Ltd. (supra).
6. Essequibo &c. Estate [1919] 148 L. T. Jo. 138.
7. Carton Ltd. [1923] 128 L. T. 629.
8. Amalgamated Syndicates [1901] 2 Ch. 181.
9. Langham Hotel Co. [1869] 20 L. T. 163.
10. Re Massey [1870] 9 Eq. 367.
11. In re Gertzenstein Ltd. [1937] 1 Ch. 115.

(a) *the assets of the company, stating separately the cash balance in hand and at the bank, if any ;*

(b) *the debts and liabilities ;*

(c) *the names, residences and occupations of the creditors stating separately the amount of secured debts and unsecured debts, and in the case of secured debts particulars of the securities, their value and the dates when they were given ;*

(d) *the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised therefrom.*

(2) *The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary, manager or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned as the official liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—*

(a) *who are or have been directors or officers of the company ;*

(b) *who have taken part in the formation of the company at any time within one year before the relevant date ;*

(c) *who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official liquidator capable of giving the information required ;*

(d) *who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.*

(3) *The statement shall be submitted within twenty-one days from the relevant date, or within such extended time as the official liquidator or the Court may for special reasons appoint.*

(4) *Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.*

(5) *If any person, without reasonable excuse, knowingly and wilfully makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.*

(6) *Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.*

(7) *Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.*

(8) *In this section the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.*

Statement by liquidator.

177B. (1) *In a case where a winding up order is made, the official liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 177A, and not later than four, or with the leave of the Court, six months from the date of the order, or in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—*

(*a*) *as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately under the heading of assets particulars of—*

(*i*) *cash and negotiable securities;*

(*ii*) *debts due from contributories;*

(*iii*) *debts due to and securities, if any, available to the company;*

(*iv*) *movable and immovable properties belonging to the company;*

(*v*) *unpaid calls; and*

(*b*) *if the company has failed, as to the causes of the failure; and*

(c) *whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.*

(2) *The official liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.*

Amendment.

Sections 177A and 177B are new and have been introduced by the Companies (Amendment) Act, 1936. They reproduce ss. 181 and 182 respectively of the English Companies Act of 1929. For the effects of the amendments see Introduction.

Custody of company's property.

178. (1) The official liquidator *whether appointed provisionally or not* shall take into his custody, or under his control, all the property, effect and actionable claims to which the company is or appears to be entitled.

(2) *All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company.*

Amendment.

By the Companies (Amendment) Act, 1936, in sub-s. (1) after the word "liquidator" the words in italics have been inserted, and the new sub-s. (2) has been substituted for the original sub-s. (2) which ran thus:

(2) If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.

Liquidator is trustee of company's property.

The official liquidator is a trustee of the company's property for the creditors, and the statute of limitation caases to run against them as soon as the winding up order is made 1. Thus Lord Selborne said: "The hand which receives the calls necessarily receives them as a statutory trustee for the equal and rateable payment of all the creditors" 2, and James L. J. spoke of the assets as being "fixed by the Act of Parliament with a trust for equal distribution among the creditors" 3, and Lord Cairns observed: "There is by this section imposed upon the assets of the company, wherever they may be at the time of the winding up, a trust to be applied in discharge of the liabilities of the company" 4. But the liquidator is not a trustee in the full sense of the word, for the property in the assets remains vested in the company 5, and when he makes contracts he does so in the company's name 5. The liquidator is not a trustee for each creditor and contributory so as to

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1. General Rolling Stock Co. [1872] 7 Ch. App. 646; Black & Co.'s case [1873] 8 Ch. App. 254.
2. Black & Co.'s case (supra) at p. 262.
3. Scinde Ry. Co. [1874] 9 Ch. App. 557, 559.
4. Delhi Bank's case [1871] 15 Sol. Jo. 923; see also the judgment of North J. in Flack's case [1894] 1 Ch. 369 and of Buckley J. in Anglo-Oriental Carpet Co. [1903] 1 Ch. 914, 918.
5. Ex parte Watkin [1875] 1 Ch. D. 130.

be liable in his capacity of trustee for negligence 1. The liquidator is only the company's agent appointed by the Court and there is no parallel between his position and that of the trustee of a bankrupt or of the sheriff as to property taken in execution, for the purpose of dealing with the company's property 2. See notes to s. 179.

New rights and liabilities in winding up.

Although the liquidator is substituted for, and enforces the rights of, the creditors in right of the company, yet the winding up order calls into existence new rights and liabilities and equities which, though they might have been set up against the company, cannot prevail against the liquidator as representing the creditors 3.

If money has been paid to a liquidator under mistake of law he, being an officer of the Court, would be ordered to refund 4.

Liquidator's powers.

The property of the company attached before the liquidation does not however vest in the liquidator. The powers of the liquidator differ in this respect from those of the receiver of an insolvent's estate in whom the property vests under the provisions of the Insolvency Act 5.

A solicitor engaged by the company is bound to make over to the liquidator any document that has come into his possession since, but not prior to, the winding up order 6.

As between the liquidator and the company's mortgagees the former is entitled to the custody of books and documents which are not necessary to support the mortgagee's title 7.

As to the resemblances and distinctions between bankruptcy and winding up see cases collected in Buckley, 10th ed. p. 374.

Committee of Inspection in compulsory winding up.

178A. (1) *The official liquidator shall within a month from the date of the order for the winding up of a company convene a meeting of the creditors of the company (as ascertained from the books and documents of the company) for the purpose of determining whether or not a committee of inspection shall be appointed to act with the liquidator, and who are to be members af the committee, if appointed.*

(2) *The official liquidator shall within a week from the date of the creditors' meeting convene a meeting of the contributories to consider the decision of the creditors and to accept the same with or without modifications.*

(3) *If the contributories do not accept the decision of the creditors in its entirety it shall be the duty of the official liquidator to apply to the Court for directions as to whether there shall be a committee of*

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1. Knowles v. Scott [1891] 1 Ch. 717 ; Hill's Waterfall &c. Co. [1896] 1 Ch. 947.
2. Farrow's Bank [1921] 2 Ch. 164.
3. Burgess's case [1880] 15 Ch. D. 507, 511 ; Whitehouse & Co. [1878] 9 Ch. D. 595, 599 ; National Funds Assurance Co. [1878] 10 Ch. D. 118 125 ; Ex. p Hatcher [1879] 12 Ch. D. 284 ; Gill's case [1879] 12 Ch. D. 755 ; Ex. p. Paine & Layton [1869] 4 Ch. App. 215 ; Prayan Prasad v. Gaya Bank [1931] P. 44, 10 Pat. 249.
4. Ex. p. Simmonds [1886] 16. Q. B. D. 308 ; re Brown [1886] 32 Ch. D. 597 ; Opera Ltd. [1891] 2 Ch. 154, 3 Ch. 260.
5. Amrita v. Anukul [1915] 20 C. W. N. 358.
6. Rapid Road Transit Co. [1909] 1 Ch. 96.
7. Engel v. South Metropolitan Brewing & Bottling Co. [1892] 1 Ch. 442.

inspection and, if so, what shall be the composition of the committee, and who shall be members thereof.

(4) *A committee of inspection appointed under this section shall consist of not more than twelve members being creditors and contributories of the company or persons holding general or special powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.*

(5) *The committee of inspection shall have the right to inspect the accounts of the official liquidator at all reasonable times.*

(6) *The committee shall meet at such times as they may from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.*

(7) *The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.*

(8) *A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.*

(9) *If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.*

(10) *A member of the committee may be removed by an ordinary resolution at a meeting of creditors if he represents creditors, or of contributories if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.*

(11) *On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.*

(12) *The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.*

Amendment. This section is new. It has been inserted by the Companies (Amendment) Act, 1936, and is based on s. 199 of the English Act of 1929. Following the provisions of ss. 198 and 199 of the English Companies Act, 1929, provisions have been made in this section for the appointment of a committee of inspection in a compulsory winding up. The section has also defined the powers, duties &c. of such committee of inspection, and made provisions for their procedure and removal of members thereof.

A member of a committee of inspection is in a fiduciary relation with the insolvent's estate. Therefore any transaction with the latter is void 1. In the last cited case the validity of the appointment of a limited company as a member of a committee of inspection was doubted.

Powers of official liquidator.

179. The official liquidator shall have power, with the sanction of the Court, to do the following things :—

(*a*) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company ;

(*b*) to carry on the business of the company so far as may be necessary for the beneficial winding up of the same ;

(*c*) to sell the immoveable and moveable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels ;

(*d*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal ;

(*e*) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors ;

(*f*) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business ;

(*g*) to raise on the security of the assets of the company any money requisite ;

(*h*) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company ; and in all such cases the money due shall, for the purpose

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1. Exp. Greaves [1937] 1 Ch. 499 C. A.

of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself: Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator General.

(*i*) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Order in general terms may be made.

An order under a compulsory winding up in general terms giving the liquidator power to do all acts without the previous sanction or interference by the Court may be made[1]. But an order in general terms will not be readily made[2]. As to whether or not a general sanction includes a power to compromise, see the case noted below[3].

Liquidator's powers under general authority.

It is the duty of the Court to settle the list of contributories, to rectify the register of members, if necessary[4], and to make calls[5]. But the High Court may by rules enable or require the official liquidator to perform these duties, provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members or make any call[6]. The Calcutta High Court in a recent case[7] has observed that in India, as distinct from England, there is at present no provision by which the liquidator in a compulsory winding up can make a call without coming to the Court. But it is apprehended that in this respect there is little distinction between the Indian and the English Act, for the proviso mentioned above exists in the English Acts substantially[8].

The defendant to proceedings brought by the liquidator cannot take the objection that the sanction of the Court has not been obtained. The Court's sanction may sometimes be inferred from the general authority given to the liquidators on their appointment[9].

Directors' powers cease.

On the appointment of a liquidator all the powers of the directors cease[10]. "The Company when in liquidation", observed Lord Watson, "although by no means defunct, could no longer act by its directors and appoint or employ agents capable of binding the corporation or its estate, and was represented by the liquidator who could not himself carry on its business without the special leave of the Court"[11].

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[1] Rochdale &c. Co. [1879] 12 Ch. D. 775; see London Quays and Warehouse Co. [1868] 3 Ch. App. 394.

[2] Britannia P. B. B. Society [1890] W. N. 170, 63 L. T. 304.

[3] South Eastern of Portugal Ry. [1869] 20 L. T. 800, 21 L. T. 220.

[4] S. 184 *post.*

[5] S. 187 *post.*

[6] S. 246 *post.*

[7] Montogomery v. Sikdar Iron Works [1932] C. 691, 36 C. W. N. 409.

[8] *Vide* s. 220 of the English Act of 1929 and s. 173 of the English Act of 1908.

[9] Turquand v. Kirby [1897] L. R. 4 Eq. 123.

[10] Fowler v. Broad's Night Light Co. [1893] 1 Ch. 724; Gosling v. Gaskel [1897] A. C. 575, 587; cf. s. 208A (2).

[11] Gosling v. Gaskell, (supra) at pp. 587-88.

Liquidator and receiver.

Where there is a question of competition between a liquidator and a receiver appointed by the Court at the instance of the debenture-holders or mortgagees, the Court will ordinarily in the exercise of its discretion give preference to the liquidator 1.

Suit by or against company.

Cl. (a). Where a company is the plaintiff or defendant in a suit, the liquidation of the company does not make any difference. The change brought about by the liquidation in regard to the suit is merely that in the conduct of its defence : the company before liquidation will act through the directors, but during liquidation through the liquidator 2. In a suit against a company since gone into liquidation the official liquidator cannot be substituted in place of the company, but the title of the suit should be amended as follows : "...... Ltd. (now in liquidation) being represented by......liquidator" 3.

It was recently held by the Court of Appeal in England that this clause did not enable a liquidator to bring an action in the name and on behalf of a company which had no existence, *e. g.*, a foreign company which had been dissolved by the laws of that country and that it only enabled a liquidator to enforce any cause of action which the company suing in its own name could enforce 4. But this decision has been reversed by the House of Lords which has held that the order for winding up having been validly made, the order under s. 191 of the English Act of 1929 (corresponding to s. 179 of the Indian Act) permitting the liquidator to bring the action in the name and on behalf of the company was rightly made and the action so brought was properly constituted 5.

Liability for costs.

If the liquidator brings or defends an action in the name of the company, he is not personally liable for costs 6 ; but if he takes proceedings in his own name, he will be personally liable 7. If he appeals without leave and his appeal is dismissed, he will be ordered to pay the costs out of his own pocket 8. If the liquidator applies for leave to appeal, he will, as a rule, be entitled to the costs of his application, unless the appeal would be frivolous 9.

If an action is pending to which the company is a party, and the liquidator decides to prosecute or defend the proceedings for the estate, the estate must be treated as the party litigant and must in case of failure pay the costs, and they are payable in full out of the assets in priority of the costs of winding up 10. The mere fact of the judgment obtained against a liquidator being under appeal does not affect the application of the last cited case 11.

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1. Per Buckland J. in Kharkharee Collieries Ltd. [1932] C. 76, following Barney v. Joshua Stubb Ltd. [1891] 1 Ch. 475.
2. Dawsons Bank v. Nippon &c. Kaisha, Ltd. [1935] P.C. 79, 39 C.W.N. 657, 61 C. L. J. 239, 37 Bom. L. R. 544 P. C. See also Lyallpur Bank v. Mandhar Lal [1936] L. 152, 161 I. C. 662 and Currembhoy & Co. v. Creet [1930] C. 113, 57 Cal. 170, 50 C. L. J. 208, 123 I. C. 250.
3. Tapesh v. Nator City Bank, decided on 2nd December, 1933 (unreported) Misc. Rules 1410 & 1411 of 1933, Calcutta High Court.
4. Russian & English Bank v. Baring Bros. & Co. [1935] Ch. 120 C. A.
5. Russian & English Bank v. Baring Bros. & Co. [1936] 154 L. T. 603.
6. Fraser v. Brascia S. T. Co. [1887] 56 L. T. 771.
7. Powell and Sons [1896] 1 Ch. 681.
8. Ferrao's case [1874] 9 Ch. App. 355 ; Kayesth T. & B. Corpn. v. Satnarain [1921] 19 A. L. J. 262.
9. Silver Valley Mines [1882] 21 Ch. D. 381.
10. Re Wenborn & Co. [1905] 1 Ch. 413.
11. Thomas Free & Sons [1911] 56 Sol. Jo. 175.

Where the party to a proceeding under s. 145 of the Code of Criminal Procedure is not the company but the liquidator and though the latter happens only to be a party by reason of the fact that he is clothed with that character, for the purposes of a proceeding under s. 145 he is to be regarded as a separate personality responsible for the action of his men, though he may be in fact acting on behalf of the company 1.

A successful litigant with the company is *prima facie* entitled to be paid immediately the cost ordered to be paid in full. The onus is on the liquidator to show that immediate payment cannot be made, or that other persons have claims in priority or ranking *pari passu* 2. Where the costs are to be paid by the liquidator personally and he is to be at liberty to retain them out of the assets of the company, such costs rank even before the costs of realization 3. Actual expenses of realization mean strictly the costs of a sale of the assets and do not extend to bill of costs of the liquidator's solicitor 4.

When the liquidator does not sue or defend in his own name, but in that of the company, there is no jurisdiction to order the liquidator to pay costs personally any more than the directors of a going company can be ordered to pay costs 5. But if he takes proceedings in his own name he will incur a personal liability 6 ; and if he appeals without leave and his appeal is dismissed, he will be ordered to pay the costs out of his own pocket 7. Where the liquidator is the applicant and fails, the proper order would be, as between himself and the adverse party, that he do pay costs without prejudice to any application that, as between him and the estate, the costs be paid out of the estate 8.

In the appeal Court if a liquidator be the appellant and fails, he will be ordered personally to pay the costs 9, which he may recover from the estate. But if the proceedings be in the Court which has the control of the winding up, it may at once determine whether as between the liquidator and the estate, the cost will come out of the estate 10.

Where in an order winding up a company there was no order as to costs by the appellate Court, it was open to the liquidator under the direction of the Court to allow payments of costs, incurred by the directors, to a reasonable amount, if he is satisfied that they were so incurred *bona fide* in the interest of the company 11. Where a company passed a resolution for voluntary winding up and a creditor shortly after that filed a petition for compulsory winding up which was opposed by the voluntary liquidator, costs of the latter were properly allowed in the discretion of the Court 12.

Where costs are ordered to be paid by the liquidator out of the assets of the company, then in case the assets are insufficient to pay these costs and the costs of

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1. S. N. Mukherjee v. Krishna Dass [1933] C. 433.
2. London Metallurgical Co. [1895] 1 Ch. 758.
3. Dominion of Canada Plumbago Co. [1884] 27 Ch. D. 33 C. A.
4. Re Bright [1903] 1 K. B. 735.
5. Fraser v. Brascia S. T. Co. (supra) ; but see Van den Hurk v. Martens & Co. [1920] 1 K. B. 850.
6. Powell & Sons (supra).
7. Ferrao's case (supra) ; Kayesth T. & B. Corpn. v. Satnarain [1921] 19 A. L. J. 262.
8. Consols Insurance v. Wood [1865] 13 W. R. 492 ; Van den Hurk v. Martens & Co. (supra).
9. Hounslow Brewery [1896] 12 T. L. R. 323 ; Powell & Sons (supra).
10. I. Bolton & Co. [1895] 1 Ch. 333, overruling Staffordshire Gas Co. [1893] 3 Ch. 523 ; see also Smallpage's case [1885] 30 Ch. D. 598.
11. J. E. Moolla v. Official Liquidator [1929] R. 139, 7 Rang. 34, 117 I. C. 568.
12. William Adler & Co. [1935] Ch. 138 C. A.

the winding up, the former are entitled to payment in priority 1. Where in arbitration proceedings the liquidator is in the position of a defendant and an award is made against the company, the costs of the reference and award should not be ordered to be paid by the liquidator personally with a right to re-imbursement out of the assets of the company, but should be ordered to be paid by the company 2. If however the liquidator applies for the statement of a special case at the hearing of which he fails he, as being there in the position of a plaintiff, may be ordered to pay the costs of the hearing with a right to re-imbursement 3.

Where a winding up order is discharged the liquidator is not entitled, as against any person, his remuneration or costs 4. His only claim is as against the assets of the company and then only so far as without interfering with the rights of the secured creditors 5. The liquidator is, as a rule, entitled to his costs out of the estate and they are generally left to the liquidation Judge 6.

The adverse litigant, if he be the defendant, may apply for security for costs under s. 280.

Right of audience.

A liquidator as such has no right of audience in a suit on the original side of the High Court to which the company is a party. A company cannot appear in person and must appear by either counsel or solicitor 7.

Solicitors appointed by liquidator.

The solicitor appointed by the liquidator will be deemed to have contracted to act for the company with recourse to the assets for payment 8, and as such has no claim against the liquidator personally 8. This applies in the case of a solicitor to the voluntary liquidator 9. In complicated cases the liquidator should be advised by a Vakil dissociated from either side 10.

Liquidator must be upright.

The Court will not encourage a liquidator in resisting, especially on technical grounds, claims to which manifestly there is no defence 11. The Court will also insist on the liquidator as its officer to act in an upright manner even to the company's opponents ; but he must not be generous at other people's expense 12.

Registration of transfer.

Where the registration of an out and out transfer of shares has not been obtained by any falsehood or concealment, the company is bound by such registration, and the liquidator is not entitled to take advantage of any equitable rights which the transferee may have as against the transferor to have the transfer set aside 13.

Summary order.

An official liquidator is not entitled by summary order to a refund of money realized by a creditor before the winding up order was passed but after the company has passed a resolution stopping payment of debts. The liquidator in such a case has to institute a regular suit like other claimants to recover the amount realized by such creditor 14.

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1. Home Investment Society [1880] 14 Ch. D. 167 ; Dominion of Canada Plumbago Co. (supra).
2. Van den Hurk v. R. Martens & Co. (supra).
3. Ibid.
4. Allison &c. Ltd. [1904] 2 K. B. 327.
5. Anglo-Austrian &c. Union [1895] 2 Ch. 891.
6. Silver Valley Mines [1882] 21 Ch. D. 381 C. A.
7. Rawlins, Kerr & Co. [1937] 41 C. W.N. 424.
8. Ex parte Watkin [1875] 1 Ch. D. 130.
9. See notes to s. 217 and Sanitary Burial Assn. [1900] 2 Ch. 289.
10. Ripon Press &c. Co. v. Gopal Chetti [1932] P. C. 1, 36 C.W.N. 54, 54 C.L.J. 439.
11. General Share &c. Co. v. Wetley Brick & Pottery Co. [1882] 20 Ch.D. 260 C.A.
12. Re Condon, *ex p.* James [1874] 9 Ch. App. 609 ; re Opera Ltd. [1891] 2 Ch. 154.
13. Lindlar's case [1910] 1 Ch. 207, 312.
14. Tarachand v. People's Bank of India [1915] 29 I. C. 265.

Inspection of books &c.

The liquidator is in the position of a receiver and manager of partnership assets appointed by the Court. Under s. 241 an order may be obtained for inspection of books of the company and it will be the liquidator's duty to give every assistance and facility in finding out the relevant books and papers; but he cannot be called upon to make an affidavit of documents 1.

Adverse party's right to discovery.

Where the liquidator represents the company as a party litigant, the adverse party has right to obtain from him the same measure of discovery as he would from any other litigant 2. Discovery may also be obtained from the liquidator in his personal as distinguished from his representative character upon a proper case being made out 3.

Authority to bid at sale.

A Judge in liquidation has no jurisdiction to make any order giving the liquidator leave to bid at an auction sale. He can of course give any direction to him to take such legal steps as he desires to take in accordance with the general provisions of the law; but the granting or refusing of permission to bid at a sale is clearly a matter for the execution Court 4.

Cause of action.

Cause of action for the liquidator to realize contributions from the contributories arises only on the appointment of the liquidator 5.

Proceeding by liquidator.

Cl. (a). A proceeding started by the liquidator is not initiated in his personal capacity but in the name and on behalf of the company, and it must be deemed as if the proceeding is being continued not only in the interest of the company, but actually by the company through its liquidator 6.

What is for the beneficial winding up.

Cl. (b). What is necessary for the beneficial winding up of a company will be determined by the Court having regard to all the circumstances and includes "mercantile necessity" 7. "The company when in liquidation," observed Lord Watson, "although by no means defunct, could no longer act by its directors, and appoint or employ agents capable of binding the corporation" 8. Without the special leave of the Court 8 a liquidator cannot carry on the business of the company with the view of making a profit for the company 7, or for facilitating reconstruction 7. Contracts may be made for the purpose of beneficial winding up of a company 7 and the onus of proving that a contract is not beneficial lies upon the party objecting to it 9. It is only for the purpose of administration and realization that the business can be continued; if a majority carry a resolution which goes beyond this, the minority are entitled to a declaration that it is *ultra vires* 10. But a contract not required for the beneficial winding up may be binding between the

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1. Mutual Society [1882] 22 Ch. D. 714.
2. Barned's Banking Corpn. [1867] 2 Ch. App. 350.
3. Sir John Moore Gold Mining Co. [1877] 37 L. T. 242.
4. Bank of Upper India v. Skinner [1927] A. 681, 103 I. C. 293, 25 A.L.J. 891.
5. J. H. Chandler & Co. [1926] A. 550, 48 All. 580; see also Union Bank Ltd. [1925] A. 518, 47 All. 669; Prayan Prasad v. Gaya Bank [1931] P. 44, 10 Pat. 249, 130 I. C. 534.
6. Shiam Lal v. Liquidator U. P. Oil Mills Co. [1933] A. 789 (F. B.), [1933] A. L. J. 1203.
7. Wreck Recovery &c. Co. [1880] 15 Ch. D. 353 C. A.
8. Per Lord Watson in Gosling v. Gaskell [1897] A.C. 575 at pp. 587-88.
9. Hire Purchase &c. Co. v. Richens [1887] 20 Q.B.D. 387 C. A.; Bank of South Australia [1895] 1 Ch. 578.
10. Re Batey, *ex parte* Emmanuel [1881] 17 Ch. D. 35 C. A.

company and the person with whom it is made, although as between the shareholders and officers of the company it may be open to objection 1.

Costs of carrying on business.

The costs of carrying on the business may not be chargeable as costs of preservation in priority to the claims of debenture-holders 2. If goods are sold and bills given by the purchaser which have not matured at the commencement of the winding up, the liquidators can collect the bills or discount them without embarking on new business.

Where it would be clearly for the benefit of the creditors that a further sum should be advanced for completion of a certain transaction, even a provisional liquidator would be justified in advancing the money 3.

As to voluntary winding up, see s. 205 and notes thereto.

Transfer by liquidators.

Cl. (c). This clause makes the official liquidator's power to sell whether by auction or by private treaty conditional on the sanction of the Court; but this must be exercised with judicial discretion having regard to the interests of the company and its creditors 4. This clause means that the liquidator can finally dispose of the property, once he has got the sanction of the Court. It does not mean that he has power merely to invite offers and to submit them to the Court for approval 5. Any sales or contract of sale effected by the liquidator in pursuance of the Court's sanction previously obtained are not merely conditional agreements subject to subsequent confirmation by the Court. Hence, where the District Court has given the official liquidator a general permission to sell the properties (provided that a certain price was obtained) and has expressly sanctioned the contract of sale entered into by the official liquidator for a sum considerably in excess of the stipulated price, the Court cannot revoke its own sanction so as to nullify the contract of sale 5.

A claim by a company against its directors for misfeasance is a chose in action and can be sold under this section 6. As to the Court's jurisdiction to sanction the reconstruction of a company by sale of its assets to a new company or to another company, see the cases noted below 7.

Where the official liquidator sells a decree standing in the name of the directors by auction, and the liquidator assigns the decree to the purchaser with the sanction of the Court, the principle of O. 21, r. 90 C. P. C. do not apply and the Court cannot set aside the sale 8.

Company's documents.

Cl. (d). Documents executed under this clause are the company's documents, and a covenant in a lease to a company against assignment is broken by an assignment by the liquidator 9.

Where a fixed deposit receipt issued by a bank which has since gone into liquidation is in the name of several persons and is not payable to "either or survivor," the liquidator is not bound to pay the dividend to any one or more of the joint holders of the receipt without obtaining a discharge from all the holders 10.

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1. Bateman & Co. v. Ball [1912] 56 L. J. (Q. B.) 291; Hire Purchase &c. Co. v. Richens (supra).
2. Exp. Grissel [1876] 3 Ch. D. 411.
3. Commercial Bank Corpn. [1866] 1 Ind. Jur. N. S. 335.
4. Gordon v. Kanthimathinatha [1926] 97 I. C. 295.
5. Routhmall v. Nagarmall [1940] M. 179, [1940] 1 M. L. J. 107, 50 M. L. W. 879.
6. Park Gate Waggon Co. [1881] 17 Ch. D. 234; Cf. Wood v. Woodhouse [1896] W. N. 4.
7. Agra & Masterman's Bank [1866] 15 L. T. 408, 12 Eq. 509 n.; Albert Life Assurance Co. [1871] 6 Ch. App. 381; Bank of South Australia [1895] 1 Ch. 578.
8. Ramanuja v. Sundara [1937] M. 176.
9. Farrow's Bank [1921] 2 Ch. 164.
10. Gokul Chand v. Doaba Bank [1918] 44 I. C. 848.

Contracts.

When a liquidator appointed by the Court performs a contract of the company without disclaimer or purports to make a new contract on its behalf, there is no presumption that he does so in his personal capacity, even though he does not describe himself as liquidator; and his position in this respect is not altered by the new s. 230A which gives him the right to disclaim any contract which he thinks onerous 1. "In my view," observed Lawrence J., "the position of a liquidator appointed by the Court is not the same as that of a receiver appointed by the Court. A liquidator is the agent of the company 2, a receiver is not 3. It is true, both are appointed and can be dismissed by the Court and both control the assets of the company and may have to carry out the contracts of the company; but the liquidator acts for and in the interests of the company, whereas the receiver and manager acts in the interests of the debenture-holders and not for the company" 4.

Although liquidation proceedings may be expected to come to an end at any time, it does not excuse the liquidator from fixing the period of employment in the case of an employee, and where no term is fixed, an employee on a monthly salary is entitled to notice when his services are to be terminated 5.

Disclaimer.

Where a liquidator makes an application for leave to disclaim an onerous lease, the Court may properly balance the advantages and disadvantages of a disclaimer to be gained by the liquidator in relation to the assets, and by the persons affected by the disclaimer. Where lessors who are entitled to appear would suffer substantial injury if the disclaimer were allowed, the Court will, in the exercise of its discretion, disallow it 6.

Set off.

Cl. (e). "The debt due to the liquidator is", observed Jessel, M. R., "distributable among the creditors, and the debt due to the individual from the company would only rank with the view of obtaining a dividend for the creditor for the amount due. The two debts are not applicable to the same purpose, and could not properly be made subject of set off" 7. In the case of insolvency of a contributory who is also a creditor, the debt may however be set off against calls under s. 161. But until the insolvency there is no right of set off 8. A bankruptcy notice must be in the name of the company and not of the liquidator 9.

Where a creditor is a member of a partnership firm, a debt alleged to be due by the latter to the company cannot be set off against the separate debt due by the company to the partner 10.

Where the set off claimed is not legally recoverable being time barred and the parties do not fill the same character in respect of the set off as they do in respect of the suit, set off will not be granted 11.

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1. Stead, Hazel & Co. v. Cooper [1933] 1 K. B. 840, following Exp. Watkin [1875] 1 Ch. D. 130, 133 & 134.
2. Exp. Watkin (supra).
3. Burt, Boulton & Hayward v. Bull [1895] 1 Q. B 276.
4. Stead, Hazel & Co. v. Cooper (supra) at p. 843.
5. Diwan Chand v. Fateh Chand & Co. [1935] L. 917.
6. Katherine et Cie, Ltd. [1932] 138 L. T. 226.
7. Whitehouse & Co. [1878] 9 Ch. D. 595 at p. 599.
8. Re G. E. B. [1903] 2 K. B. 340.
9. Re Winterbottom [1886] 18 Q. B. D. 446; Re Nance [1893] 1 Q. B. 590.
10. Pennington & Owen Ltd. [1925] Ch. 825 C. A. In this case the principle laid down in Turner v. Turner [1911] 1 Ch. 716 was held to be inapplicable.
11. Alliance Bank of Simla v. Feroz Shah [1936] Pesh. 57, 160 I. C. 908, following A. Bharat v. Chet Ram [1934] A. 427, [1934] A. L. J. 286, 150 I. C. 105.

Negotiable instruments.

Cl. (f). As to the Court's sanction to the liquidator accepting or negotiating bills, see the cases noted below 1. The power given to liquidators to endorse promissory notes, being a power given by the statute, cannot be delegated in the absence of a statutory provision for such delegation. Consequently, an endorsement of a promissory note by the agents appointed by the liquidators conveys no title in law to the assignees. The assignment being void *ab initio*, no subsequent ratification by the liquidator can validate it 2.

After dissolution of the company the liquidator has no power to indorse a promissory note 3.

Meaning of "assets."

Cl. (g). The assets include all contributions which the liquidator is entitled to get from the members past or present, as well as all assets which have been misappropriated as against creditors 4. The realized assets of a company divided among the shareholders in pursuance of a resolution are assets within the meaning of this clause 5.

In England it has been held that in the winding up of an insurance company the deposit made with the Government forms assets of the company available for distribution among all its creditors generally, and is not primarily applicable to the satisfaction of the claims of the policy-holders 6. But this is not so in India; see s. 8, Insurance Act IV of 1938.

Where in response to an advertisement for a sale of a company's property, a person offered either to take a mortgage or to purchase the property on certain terms, he will not be allowed to act otherwise than in the way promised, *first*, as the liquidator has acted in the mannar suggested and has thereby changed his position; *secondly*, the offer having been accepted should be regarded as a valid and binding contract 7.

Letters of administration.

Cl. (h). The official liquidator need not take out letters of administration to the estate of a deceased shareholder before settling the list of contributories 8.

Compromise.

Cl. (i). The liquidator cannot consider a mere matter of pity or mercy. He must make out a case that the compromise will be beneficial to the company, for example, that there is a contested claim and if the compromise is entered into, the payment would be very much sooner than if the claim was contested, or on similar grounds. The Court has no jurisdiction to compel an unwilling liquidator to compromise a debt due to the company in liquidation 9. In *Pearson's case* 10 the Court of appeal has held that the Court has no more power to compel the liquidator to accept a compromise than to compel an ordinary suitor to take less than what is due to him. The only power is in the liquidator with the sanction of the Court. There is no power in the Court to order a compromise, whether the liquidator recommends it or not.

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1. Ebow Vale Co.'s Claim [1869] 8 Eq. 14; Gladestanes & Co.'s case [1866] 1 Ch. App. 538.
2. Sankamma v. Anantha [1940] M. 882, [1940] 2 M. L. J. 309, [1940] M. W. N. 796.
3. Ramchandra v. Kandasami [1895] 18 Mad. 498.
4. Stringer's case [1869] 4 Ch. App. 475.
5. Ganges Steam Tug Co. [1891] 18 Cal. 31.
6. See South East Lancashire Insurance Co. [1935] Ch. 225, C. A.
7. Union Indian Sugar Mills Co. [1930] A. 330, [1930] A. L. J. 305, 127 I. C. 428.
8. Sorabji v. Iswardas [1895] 20 Bom. 654.
9. Peoples Bank of N. India [1939] L. 497, [1939] Lah. 324; Chiragh Din v. O. L. Peoples Bank of N. India [1939] Lah. 299.
10. [1872] 7 Ch. App. 309; see also Hankey's case [1872] 26 L. T. 358.

Distribution of assets.

The contributions and assets with other properties of the company form a common fund to be applied in the manner directed by the Act 1 after satisfying the claims of its secured creditors who are not bound to avail themselves of the winding up proceedings, but may pursue their own remedies 2. The liquidator has, with the sanction of the Court, power to distribute shares of other companies forming part of the liquidating company's assets instead of selling them 3.

Before any distribution of surplus among the contributories the liquidator ought to take every means to satisfy himself that all creditors are paid, not only by advertizing, but by writing to those creditors of whose existence he knows, and by asking them if they have any claims against the company 4. A liquidator who has failed to see that the assets are applied in paying debts is liable to a creditor who has suffered damages 4. This rule would apply even before dissolution when the default is the result of neglect of duty, even though not wilful 5. In the undernoted case the Judicial Committee observed : "But that it should be regarded as a normal course of liquidation justifiable without explanation ; that a liquidator should pay the creditors merely a dividend on their debts, when surplus assets large in amount remain in hand, and should then allow the contributories without definition of their interests therein to take possession for themselves of these surplus assets seems to the Board a serious matter, and it is necessary, their Lordships think, to call attention to its impropriety" 6. "The duties and responsibilities of the liquidator are as serious in the liquidation of a private company as of any other" 6.

It is the duty of the liquidators to decide what is properly due from the company to various claimants, and the liquidators are entitled to go behind decrees which they consider were not properly obtained 7.

Subject to the rights of the secured creditors and certain other creditors who are to be paid in priority, the assets in a winding up are subject to a trust for the benefit of all the creditors and must be distributed on a footing of equality. The assets include all contributions which the liquidator is entitled to obtain from members or persons who have been members within a certain time before the winding up commenced, and all assets which have been misapplied and misappropriated as against the creditors and which a creditor has a right to have recouped 8.

Creditor's remedy.

When the company is dissolved the statutory remedy of the creditors is gone, but the duty of the liquidator remains, and a contributory or creditor has a remedy at common law for injury caused to him by a breach of the liquidator's statutory duty 9.

The liquidator is not however liable for loss occasioned by the felonious acts of servants if properly selected 10.

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1. Webb v. Whiffin [1872] L. R. 5 H. L. 711, 724.
2. Re Pound, Son & Hutchins [1889] 42 Ch. D. 402 C. A.
3. English & Foreign Credit Co. [1884] 1 T. L. R. I.
4. Pulsford v. Devenish [1903] 2 Ch. 625 ; Argylls Ltd. v. Coxeter [1913] 29 T. L. R. 355.
5. Gore-Browne, 36th ed. p. 507.
6. Ditcham v. Miller [1931] P. C. 203, 134 I. C. 324.
7. O. L. Gorakhpur Electric Supply Co. v. Siemens (India) Ltd. [1940] A. 514, [1940] All. 730, [1940] A. L. J. 739.
8. Ganges Steam Tug Co. (supra).
9. Pulsford v. Devenish (supra).
10. Jobson v. Palmer [1893] 1 Ch. 71 ; but see Lloyd v. Grace Smith & Co. [1912] A. C. 716.

Payment by the liquidator of statute-barred debts is improper and the money must be returned 1.

"In a winding up", observed Sir W. Page-Wood V. C., "the liquidator acts not merely for creditors, but for contributories and for the companies also. At the same time Legislature stopped short of saying that a winding up should be a bankruptcy. The liquidator does not act more for the creditors than he does for the company" 2. The liquidator is only the company's agent appointed by the Court and there is no parallel between his position and that of the trustee of a bankrupt or of the sheriff as to property taken in execution, for the purpose of dealing with the company's property. The cases in bankruptcy in which it has been held that a trustee in a bankruptcy can assign free from the bankrupt's covenant against assignment without licence depend on the circumstance that the bankrupt's leasehold interest vests in his trustee by operation of law, so that he is not an assign of the bankrupt and consequently not bound by the covenant. These cases therefore have no application to a liquidator, because the company's leasehold interest remains vested in the company after a winding up order and the liquidator acts on behalf of the company in assigning it 3.

Liquidator's position.

The official liquidator is also an agent of the Court for the purpose of liquidation. A decree obtained by the company before liquidation does not vest in the liquidator and he cannot take any proceedings in execution in his own name. Where such a decree is transferred to another Court for execution before liquidation, it can be executed by the transferee Court after liquidation on the application of the liquidator in the name of the company 4.

His duty.

The voluntary liquidator is bound to get all contracts for the allotment of shares otherwise than for cash filed with the registrar; for such a liquidator is also an officer of the company 5. The official liquidator should not become partisan in a dispute between two sets of contributories concerning the propriety of an order from which alone his authority proceeds. His only duty on an appeal against such an order is to take a position of complete impartiality and in the interests of the whole body of his constituent contributories, to be ready to inform the Court of any facts and circumstances in relation to the company's affairs about which he might be asked 6. In this case their Lordships of the Judicial Committee severely condemned the partisan activities of the official liquidator. In such cases the liquidator should be assisted by a vakil equally dissociated from either side 7. Their Lordships strongly deprecated *ex parte* orders giving the official liquidator leave to oppose the appeal which enabled him, free of expense to the petitioners in relief to their responsibilities and already at a cost far in excess of any possible interest of theirs in the assets, to fight their battle with non-success and at what must be the inordinate expense to their opponents. "It is to be hoped", observed their Lordships 8, "that orders like that of 14th November, 1928 will not in future be lightly made in the course of an Indian winding up."

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1. Fleetwood &c. Syndicate [1915] 1 Ch. 486.
2. Marine Mansions Co. [1867] 4 Eq. 601 at p. 610.
3. Re Farrow's Bank [1921] 2 Ch. 164.
4. Lyallpur Bank v. Mandhar Lal [1936] L. 152, 161 I. C. 662.
5. Re X & Co. [1907] 2 Ch. 92.
6. Ripon Press &c. Co. v. Gopal Chetti [1932] P. C. 1 (8-9), 36 C. W. N. 54, 54 C. L. J. 439.
7. Ibid, at p. 13.
8. Ibid, at p. 9.

The official liquidator representing a company is in no different position from any one else against whom a stranger or a third party makes a claim. His only duty is to consider, and if he thiks it an admissible claim, to admit, and if he thinks it an inadmissible claim to reject it; and accordingly he is not bound to call on the claimant to appear before him 1.

Lending company's money.

"It is highly improper for any liquidator," observed Lord Romilly, "to employ any of the company's money in his hands in any loan whatever. Of course, if he does, and if any profit is made out of it, that profit will belong to the owners of the money. It must never however be forgotten that no money can be lent on loan without some risk even for a short time. If therefore the persons to whom the loans are made should fail, the loss would fall with the greatest severity on the creditors and contributories of the company" 2.

This omnibus clause (i) does not however authorize the official liquidator to make a reference to private arbitration of the dues of the company 3.

Applicability of the section.

This section is, by virtue of s. 276, applicable to an unregistered company wound up under s. 271. So in the bankruptcy of a contributory of an unregistered company the liquidator may prove for the estimated amount of future calls 4.

Discretion of official liquidator.

180. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

See notes to the previous section.

Provision for legal assistance to official liquidator.

181. The official liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties: Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

Employment of solicitor.

In liquidation ordinarily the appointment of the petitioning creditor's solicitors as solicitors for the liquidator is favoured especially where they are acquainted for sometime with the proceedings 5. In complicated cases the liquidator should be advised by a vakil dissociated from either side 6. Although the liquidator may employ a solicitor with the sanction of the Court, he is not justified in obtaining *ex parte* sanction. He is bound to have regard to the directions mentioned in s. 183 7, *i.e.*, he should take the opinion of the creditors and contributories. The sanction to institute or defend legal proceedings does not dispense with the necessity of obtaining express sanction to the employment of a parti-

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1. Johnston v. Official Liquidator [1939] R. 46.
2. Re Anon. [1866] 15 L. T. 170.
3. Dehra Dun Mussoree Tramways Co. [1928] A. 553, 26 A. L. J. 810.
4. Ex p. Ball [1873] 10 Ch. App. 48.
5. Jamnadas N. G. & Pressing Co. [1935] B. 337, 37 Bom. L. R. 401, 157 I. C. 1093; ex p. Barnard [1892] 3 Ch. 307; Telescriptor Syndicate [1903] 2 Ch. 174.
6. Ripon Press &c. Co. v. Gopal Chetti [1932] P. C. 1, 36 C.W.N. 54, 54 C.L.J. 439.
7. Re Consolidared D. E. Manufacturers [1915] 1 Ch. 192.

cular solicitor 1. The interests of the creditors are involved in the selection by the liquidator of a firm of solicitors who were not previously concerned in the proceedings. Such selection is always a matter of some importance and the Court accedes to an invitation to re-consider its *ex parte* decision on significant facts being brought to its notice 2. As to the form of authority, see *re Vavasour* 3.

If the liquidator employs a solicitor, the former is not personally liable to him 4. The solicitor has a lien on any funds recovered through his instrumentality 5, and may obtain a charging order in respect of them 6. But the solicitor has no lien on documents coming into his possession after commencement of the winding up in respect of a debt existing before the winding up 7.

Liquidator to keep books containing proceedings of meetings and to submit account of his receipts to Court.

182. (1) The official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

(2) *Every official liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as such liquidator.*

(3) *The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.*

(4) *The Court shall cause the account to be audited in such manner as it thinks fit and for the purpose of the audit the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may at any time require the production of and inspect any books or accounts kept by the liquidator.*

(5) *When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the registrar for filing, and each copy shall be open to the inspection of any creditor, or of any person interested.*

Amendment.

By the Companies (Amendment) Act, 1936, the original s. 182 has been renumbered as sub-s. (1) and sub-ss (2), (3), (4) and (5) have been added. These reproduce s. 195 of the English Act of 1929. For effect of the amendment see Introduction.

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1. London Metallurgical Co. [1897] 2 Ch. 262.
2. Jamnadas N. G. Pressing Co. (supra); Consolidated D. E. Manufactures (supra); Ex p. Watkin [1875] 1 Ch. D. 180.
3. [1900] 2 K. B. 309.
4. Re Trueman's Estate [1872] 14 Eq. 278.
5. Re Massey [1870] 9 Eq. 367.
6. Re Born [1900] 2 Ch. 433.
7. Capital Fire Insurance Assn. [1883] 24 Ch. D. 408; Rapid Road Transit Co. [1909] 1 Ch. 96.

183. (1) Subject to the provisions of this Act the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting *or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.*

Exercise and control of liquidator's powers.

(2) The official liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provisions of this Act, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(5) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

By the Companies (Amendment) Act, 1936, the words in italics have been added to sub-s. (1).

Sub-s. (2). In the case of *Radford & Bright* 1, a meeting was summoned under this section.

Court's direction.

Sub-s. (3). In an application for sanction of a compromise or an arrangement between a company in liquidation and its creditors the Court would give effect to the wishes of the statutory majority, unless something is brought to the attention of the Court to show that there has been some material oversight or miscarriage 2.

Where a majority in number of the creditors and contributories vote one way and a majority in value vote the other way, the Court will decide the matter 2. The opinion of the majority in value should be given effect to especially when they are in favour of the liquidator 3.

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1. [1901] 1 Ch. 272.
2. Bombay Cotton Manufg. Co. [1910] 12 Bom. L.R. 525.
3. Bloxwich Iron & Steel Co. [1894] W.N. 111, 38 S.J. 546.

Distribution of assets.

Sub-s. (4). Where a person made a deposit to a company as security for the performance of a contract, but stipulated that in the event of the company raising a loan secured by a debenture or mortgage, the sum deposited was to be forthwith invested in Government securities and to be ear-marked in some manner satisfactory to the depositor, it was held that this did not create a fiduciary relation and no preference could be claimed by the depositor in respect of the assets of the company in the hands of its liquidator **1**.

Sub-s. (5). This sub-section does not apply to a case in which the act or decision of the official liquidator has been performed or made in pursuance of the Court's express sanction **2**.

The petitioning creditors are persons interested in the appointment of the solicitors for the official liquidator and ought to be deemed to be persons aggrieved by the act of the official liquidator under this sub-section. They can therefore apply for reviewing *ex parte* order appointing a particular firm as attorneys **3**.

Ordinary Powers of Court.

Settlement of list of contributories and application of assets.

184. (1) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

S.86 C.P.C.

S. 86 of the Code of Civil Procedure does not apply to proceedings under this section. It cannot be said that when a list of contributories is to be settled under this section, the Court is starting any proceedings analogous to that of a civil suit brought by a private person against a sovereign Prince or ruling Chief. It is not therefore necessary that before the list is settled the consent of the Governor General under s. 86 C. P. C. should be obtained **4**.

Court's power discretionary.

This section incorporates s. 38. On an application under this section the Court has power to decide any question relating to the title of the aggrieved person to have his name entered in or omitted from the register of members and generally to decide any question necessary or expedient to be decided for the rectification of the register. The exercise of the jurisdiction is discretionary having regard to the person who is the applicant and to all the facts and circumstances of the case **5**.

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1. Maneckji Petit Manfg. Co. [1932] B. 311, 34 Bom. L.R. 728.
2. Routhmal v. Nagarmall [1940] M. 179, [1940] 1 M. L. J. 107, 50 M. L. W. 879.
3. Jamnadas N. G. & Pressing Co. (supra).
4. O.L. Dehra Dun Mussorie E. Tramways Co. v. Nabha State [1936] A. 826 (F.B.), 58 All. 742.
5. Peninsular Life Assurance Co. [1936] B. 24, 37 Bom. L.R. 904, 160 I.C. 638.

As to who are liable to be settled on the list of contributories, see ss. 156 to 161 and notes thereto. The liquidator can settle the list of contributories, but he cannot rectify the register of members without leave of the Court 1. With the special leave of the Court he can rectify the register either at the time of the original settlement of the list 2, or subsequently 3, and the power conferred by the section is not limited to rectification for the purpose of settling the list of contributories 4. Where a certain bank was appointed liquidator and notice signed by the manager of the bank was sent to a person stating that his name was included in the list of contributories, it was held that the notice was valid 5. As to rectification of the register, see s. 38 and notes thereto.

Powers of the Court & liquidator.

When limitation is specifically provided for in the Rules for filing objections to a notice, the specific provision must prevail and not the general provision in the Limitation Act 5.

Limitation.

After completion of the preliminary list of contributories the official liquidator will give notice to the persons entered on the list of the day appointed by the Court for hearing objections 6. The Court on the day appointed will hear the objections, even if the Rules framed by the High Court under s. 246 require that the objector should first get his name entered in a book before the hearing of the objections 7.

List of contributories.

There is nothing in the Court of Wards Act which conflicts with the Companies Act in the matter of allowing an application for the varying of the list of contributories by placing upon it the name of the Collector in lieu of the name of a person whose estate has been taken over by the Court of Wards 8.

The liability of a registered shareholder to contribute is a *prima facie* liability only, it being open to him to show that although his name was on the register, he did not agree to become a member, nor was he cognizant of the registration of his name 9. But if the person whose name is duly entered on the register as a member on the date of commencement of the winding up seeks to have his name removed on the ground that although he agreed to become a member the agreement is voidable at his option, it is necessary that he should, before the winding up commenced, have definitely and effectively repudiated the agreement 9 and followed up his repudiation by active measures to have his name removed from the register 10, except where there is some agreement which exonerates the member from the necessity of taking such steps 11. The same principles apply whether the winding up is compulsory or voluntary or under supervision of the Court 12.

Prima facie liability.

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1. S. 246.
2. Onward Building Society [1891] 2 Q.B. 463.
3. Sussex Brick Co. [1904] 1 Ch. 598 ; Reese River Silver Mining Co. v. Smith [1870] 4 H.L. 64.
4. Cotton v. Pegu Saw Mills [1868] 9 W.R. (Indian) 539 ; Breckenridge's case [1865] 2 H. & M. 642.
5. Shanti Lal v. Lyallpur Bank [1935] L. 645, 159 I.C. 1044.
6. See Rule 143 of the fresh Rules framed by the Calcutta High Court (printed in the Appendix).
7. Kirpa Narain v. National Sugar Mill [1932] L. 123.
8. Sonardih Coal Co. [1930] A. 617, [1930] A.L.J. 1203, 124 I.C. 726.
9. Sussex Brick Co. (supra).
10. Hare's case [1869] 4 Ch. App. 503.
11. Pawle's case [1869] 4 Ch. App. 497 ; Whiteley's case [1900] 1 Ch. 365.
12. Stone v. City & County Bank [1877] 3 C.P.D. 282 C.A.

Notice of forfeiture.

A mere notice that if the shareholder does not pay the call in respect of allotment by a certain date the shares allotted would be forfeited without further notice, does not effect forfeiture without a resolution actually forfeiting the shares. Such a shareholder cannot object to being included in the list of contributories[1]. See notes to reg. 24 *post.*

The liability of the legal representatives of deceased shareholders to contribute is limited to the extent of the assets, if any, coming into their hands[2].

Certificate—where no estoppel by.

Where a person knows that the shares in respect of which he remains on the register were not paid for or paid up, he cannot rely on the share certificate stating they were fully paid up as an estoppel; so he must remain on the list of contributories[3].

Substitution of names.

Where a person with the intention of deceiving the company takes shares in the name of a fictitious person or of some person without his authority, the liquidator can place his name on the list of contributories, and the Court will rectify the register and if necessary the list of contributories[4]. But rectification by substituting the name of a beneficiary for that of his registered trustee cannot be obtained[5]. The liquidator can substitute a transferor for the transferee where the latter is an infant at the time the winding up commences[5]. The liquidator cannot however substitute the name of a husband for that of his wife, although she has no separate estate and the shares were given to her by him[6].

A father purchasing shares in the name of his minor son is personally liable for the shares, and the list of contributories can be altered by substituting the father's name for that of the son[7].

Shareholder's duty and right.

The shareholder who seeks to be discharged from liability must have repudiated the contract and have got his name off the register subject to the qualification that if he has, before the commencement of the winding up, taken proceedings to have his name removed that will be sufficient[8]. A person cannot be settled on the list of contributories if before the commencement of the winding up he has not only repudiated the shares, but has also asserted his right to repudiate them in an action by the company to enforce calls upon him[9]. But the right of rescission which is ordinarily available against the company cannot be enforced against its creditors who are the persons vitally interested in the winding up[10].

In a winding up proceeding the shareholder is not entitled to have his name struck off the list of contributories on the ground that he was induced to purchase the shares by the false reports and balance-sheet issued by the company[11]. Where the contributory

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1. Guruswamy v. Indo-Carnatic Bank [1940] M. 873, [1440] M. W. N. 553. See also Prayan Prasad v. Gaya Bank [1931] Pat. 44, 10 Pat. 249.
2. Prayan Prasad v. Gaya Bank [1931] P. 44, 10 Pat. 249, 130 I.C. 534.
3. Exp. Bloomenthal [1896] 2 Ch. 525.
4. Savigny's case [1899] W.N. 1, 5 Manson 336.
5. Curtis's case [1868] 6 Eq. 455 ; King's case [1871] 6 Ch. App. 196.
6. Elmore's case [1889] 13 Bom. 57.
7. Behari v. Amritsar Bank [1918] 46 I. C. 432 ; see Pugh & Sharman's case [1872] 13 Eq. 566 ; National Bank of Wales [1907] 1 Ch. 582 ; see also Muslim Bank of India, [1939] Lah. 299, [1939] L. 515.
8. Peara Singh v. Peshwar Bank [1915] 28 I. C. 53 ; Hirji Khetsey v. Indian Specie Bank [1914] 27 I. C. 505 ; West v. Bank [1914] 24 I. C. 236.
9. Peara Singh v. Peshwar Bank (supra).
10. Ibid & Scottish Petroleum Co. [1883] 23 Ch. D. 413.
11. Hirji Khetsey v. Indian Specie Bank (supra).

fails to show that his name was entered in the register fraudulently or without sufficient cause, an order for rectification of the share register by deleting a certain number of shares standing against the name of the applicant ought not to be passed 1.

Irregular allotment when invalid and when not.

The allotment of shares by an irregularly constituted board is invalid. But if the articles validate such an act by a *de facto* director in a *bona fide* manner the Court will uphold his act. Where the applicant for shares did not decline to accept the shares allotted to him, he could not raise an objection against his being put on the list of contributories when the company went into liquidation 2.

Where no notice of allotment of shares is served upon those to whom shares are allotted, they cannot be placed upon the list of contributories 2.

Conditional allotment.

Where shares applied for were allotted on condition that a branch company would be started which failed to materialize, the allottee could not be regarded as a member but a creditor, and he was not liable as a contributory 3.

Where the application for shares is conditional on the applicant being appointed a director or an officer of the company and the condition was not fulfilled, the applicant cannot be treated as a shareholder 4.

When shareholder liable.

If before a contract to take shares is rescinded, a winding up is commenced or the company ceases to be a going concern, the applicant can no longer be relieved, but will be liable to be a contributory 5.

Where shares have been forfeited by the managing director in such a way that the proceeding is *ultra vires*, the shareholder may be placed on the list of contributories inspite of such forfeiture 6.

A resolution passed by a company authorizing the money of those shareholders to be returned who had not paid their allotment money and were not willing to remain as members, is *ultra vires* and cannot operate to relieve such shareholders of their liability as contributories 7.

Right of set off.

A debtor who is not a member is entitled to plead in an action by the official liquidator by way of set off that an ascertained sum of money is due to him from the company 8. Though a debt due by a company is not presently payable, it can be set off against moneys owing to the company in liquidation. If a debtor of a company takes an assignment of a debt due by the company before it goes into liquidation, a set off of the one against the other can be allowed in liquidation proceedings and it would not amount to a fraudulent preference 9.

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1. Peninsular Life Assurance Co. [1936] B. 24, 37 Bom. L. R. 904.
2. Changa Mal v. Provincial Bank [1914] 36 All. 412 ; see also Scottish Petroleum Co. [1883] 23 Ch. D. 413 ; Dawson v. African &c. Co. [1898] 1 Ch. 6 ; British Asbestos Co. v. Boyd [1903] 2 Ch. 439.
3. Mahendra v. Lachman [1913] 35 All. 538.
4. Ramanbhai v. Ghasiram [1918] 42 Bom. 595, 20 Bom. L. R. 692 ; Powell v. S. C. Sen [1918] 40 All. 45.
5. Lachman Singh v. Liquidator, Industrial East Co. [1914] 25 I. C. 672.
6. Kanshi Ram v. Kishore Chand [1915] 29 I. C. 567.
7. People's Industrial Bank v. Jalpa Prasad [1921] 19 A. L. J. 351.
8. Meher Chand v. Amritsar Bank [1915] 28 I. C. 975.
9. Anantaraman v. O. L. Travancore N. & Q. Bank [1939] M. W. N. 1096. See in this connection Travancore N. Bank Subsidiary Co. v. Mani Aiyar [1939] 2 M. L. J. 325.

Where action for call commenced. If the liquidator has already commenced an action for calls, this does not preclude him from discontinuing it and settling the defendant on the list; but the costs of the action will be deducted from the amount recovered 1.

Payment of uncalled capital. Where the directors knowing that the company is insolvent make payment of an amount representing the uncalled capital due by them for shares, such payment will be treated as payment towards capital and not as a loan to the company 2.

Liability of subscriber to memorandum. A subscriber to the memorandum of association remains a member until the company, authorized to do so by its articles, accepts a surrender of the shares for valid reasons, or the subscriber himself pays for the shares and validly transfers them to somebody else 3. The present of paid up shares by a third party does not satisfy the obligation of a subscriber to the memorandum of association to take shares 4. The issue of a certificate does not estop the company so long as the certificate does not pass to a *bona fide* purchaser for value 4. Where there are left shares available for allotment, the fact that none had been allotted to the subscriber made no difference and the liquidator was entitled to hold him to the contract which he had made with the company when he signed the memorandum 5.

Shares purchased in minor's name. Where a father has purchased shares with his own money for his minor sons by signing the application form on behalf of the sons, the father must be treated as the owner of the shares and must be placed on the list of contributories 6. The same principle applies where the father has purchased by transfer shares by signing the minor sons' names on the transfer form as transferees through himself 6.

Costs. Where an unsuccessful application by an official liquidator to place certain shareholders on the list of contributories is *bona fide* made, the Court would order the costs of each side to be a first charge on the assets 5. But the cost of a contest by a person disputing his liability as a contributory and failing must, except under very exceptional circumstances, be paid by such contributory 7.

Test suit. If a shareholder commences a litigation to have his name removed and there is an agreement between the company and other repudiating shareholders that all the cases shall stand or fall by the result of that litigation, then if that case is decided in favour of the litigant shareholder, the others will be relieved 8.

Procedure. The power given to the Court under this section will not be exercised by it of its own motion but on application and considering all the circumstances 9. After the winding up order and before the list of contributories has been settled a contributory and the company can move for rectification under

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1. United Service Assn. [1901] 1 Ch. 97.
2. Hari Ram v. Commercial Bank [1921] 19 A. L. J. 445.
3. U. P. Oil Mills Co. [1931] A. 701, 133 I. C. 424. See notes to ss. 5 and 30 *ante*.
4. Elmore's case [1889] 13 Bom. 57.
5. Hopetown Tea Co. [1889] 11 All. 349.
6. Muslim Bank of India [1939] L. 515, [1939] Lah. 299. See also Richardson's case [1875] 9 Eq. 588; Massey & Griffin's case [1907] 1 Ch. 582.
7. Peninsular Life Assurance Co. [1936] B. 24, 160 I. C. 638.
8. Pawle's case [1869] 4 Ch. App. 497; Scottish Petroleum Co. [1883] 23 Ch. D. 413.
9. Sichell's case [1868] 3 Ch. App. 119.

this section and s. 38 1. As between a vendor and a purchaser of shares, after the commencement of the winding up, order for rectification will not be made except on strong grounds 2.

Where the rectification is applied for in liquidation by the company, the application ought to be in the name of the company and not of the liquidator 3.

Resettling the list.

Where the register is rectified after the list of contributories has been settled the Court may resettle the list (note 7, last page) and the register may be rectified as to date so as to give effect to an act done before rectification by the person who by rectification comes on to A list, or so as to affect the B list of contributories 4.

Joinder of parties.

Where a contributory contests his liability on the ground of a transfer or otherwise, he ought to bring before the Court the person who according to him is liable 5. But if the transferee cannot be found 6, or there is no legal personal representative of the transferee 7, or where the transferee is an infant 8, an order for rectification will be made.

Liability upon transfer of shares.

When shares are transferred to an infant the transferor remains liable as a contributory 9. "A man who executes a transfer of shares remains liable unless and until there is on the list a transferee who is legally liable to the company" 9. Thus where the transferee is an infant, and the company is ignorant of the fact, the official liquidator may refuse to accept him as a shareholder although after coming of age he may be willing to confirm the transfer 9.

A transfer of shares by a director, who is aware that the financial position of the company is hopeless, to a person of straw for the sole purpose of avoiding liability on the shares is not invalid provided the transfer is absolute and unqualified 11. On the winding up of the company the liquidator is not entitled in such a case to rectification of the register and of the list of contributories by deleting the name of the transferee and inserting the transferor's name 10.

Where a person has been given shares or shares have been transferred to him as qualification for his directorship, such a transfer makes the transferee a member of the company and if such a person holds out that he is a shareholder, he is estopped from denying that he is a member, where the company goes into liquidation, on the ground that the transfer was a mere colourable transaction. He cannot object to his name being included in the list of contributories 11.

Where the liquidator seeks to place a person on the list of contributories and the latter objects on the ground of his having transferred his shares, it is incumbent on him to show that at some time or other there was on the register a transferee of his who could be made liable at law for the shares 12.

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1. Reese River Silver Mining Co. v. Smith [1869] 4 H. L. 64, 80; Sussex Brick Co. [1904] 1 Ch. 598; Sly, Spink & Co. [1911] 2 Ch. 430.
2. Onward Building Society [1891] 2 Q. B. 463.
3. Ex-parte Kintrea [1869] 5 Ch. App. 95.   4. Buckly, 10th ed. p. 391.
5. European Arbitration Co. [1873] 17 S. J. 289, [1874] 18 S. J. 28.
6. Corfield's case [1873] W.N. 186.   7. Fyfe's case [1869] 4 Ch. App. 768.
8. Wilson's case [1869] 8 Eq. 240; Bentinck's case [1874] 18 S. J. 224; Curtis' case [1868] 6 Eq. 455.
9. Symon's case [1870] 5 Ch. App. 298.
10. M'Lintock v. Campbell [1916] S. C. 966.
11. Mulk Raj v. Peoples Bank of N. India [1936] L. 480.
12. Curtis' case [1868] 6 Eq. 455.

Res Judicata.

Where a suit by a voluntary liquidator against a person for the recovery of a sum of money said to be due by him to the company by reason of his being a shareholder is dismissed for default, an application by the official liquidator for placing the same person on the list of contributories is barred by O. 9, r. 9, C.P.C. 1. A question which has been settled by the liquidating Court cannot be re-opened by a regular suit, for the legislature never intended that matters should be decided twice over 2. An order passed by the Court bringing the name of a person on the list of contributories, if not appealed against, becomes final and the question as to his liability as contributory cannot be re-opened 3.

Laches.

If owing to the default of the company a transfer has not been registered before the winding up, the Court will not rectify the register on the application of the official liquidator 4. If fully paid shares are purported to be allotted by an improperly constituted board, and the allottees are aware of the irregularity, their names can be removed from the register on the application of the company 5. The company may lose its right by laches to have the register rectified 5.

The official liquidator is not however precluded by delay from placing a subscriber to the memorandum of association on the list of contributories 6.

Fully paid up shares.

Where shares have been issued as fully paid up without complying with the provisions of the Act, the shareholder will be placed on the list of contributories; but a purchaser of the shares without notice of the irregularity will not be so placed, nor another purchaser from him although this latter knew of this irregularity 7.

Power to require delivery of property.

185. The Court may, at any time after making a winding up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the official liquidator any money, property or documents in his hands to which the company is *prima facie* entitled.

Scope.

This section is concerned mainly with property and money which can be shown, without any doubt, to be actually in the hands of the party against whom the order is to be made, at the time of the application 8. This section does not contemplate an elaborate enquiry, but discretion must be left to the Court to decide whether any particular claim can or cannot be conveniently dealt with under this section 9. This section does not give the Court any power to pass orders against persons other than those mentioned therein 10.

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1. Rup Ram v. Fazal Din [1920] 57 I. C. 223.
2. Kishen Das. v. Doaba Bank [1918] 45 I. C. 84.
3. Waryam Singh v. Eastern &c. Co. [1926] L. 414, 95 I. C. 252.
4. Sichell's case [1868] 3 Ch. App. 119; General F. Dock Co. [1866] 15 L. T. 526.
5. Sly, Spink & Co. [1911] 2 Ch. 430.
6. Sidney's case [1871] 13 Eq. 228, 231; see also Hall's case [1870] 5 Ch. App. 707 and Levick's case [1870] 40 L. J. Ch. 180, 23 L. T. 838.
7. In re Gulab Das [1893] 17 Bom. 672.
8. Eastern Tavoy Minerals Corpn. [1937] 41 C. W. N. 975, 976.
9. Venkatarama v. Sarvottama [1937] M. 401.
10. O. L. Gorakhpur Electric Supply Co. v. Siemens (India), Ltd. [1940] A. 514, [1940] All. 730, [1940] A. L. J. 739.

Applicability of section.

This section is applicable only to contributories, officers of the company and other persons mentioned therein The company's solicitor is such a person 1, but not an accountant to whom the books have been made over for preparing a balance-sheet 2 ; nor a creditor who has obtained a garnishee order is a "trustee" within the meaning of this section 3.

A banker holding adversely to the company is not within the section 4. Generally the section does not apply if a dispute is raised, there being nothing in the section empowering the Court to determine the question 1.

Court's power.

Under this section the Court has summary power to take steps to preserve *pendente lite* the property which *prima facie* appears to belong to the company ; and apart from the Companies Act the Court has ample power *ex debito justitiæ* to pass interim orders for protection and preservation of the subject matter in litigation under ss. 94 and 151 and Orders 39 and 40 of the Code of Civil Procedure 5. Where the managing agents of a company admitted to be in possession of money belonging to the company, but claimed a lien over it, the Court asked them under this section to deposit the amount in Court until the adjudication of their claim 6. Where the chairman of a bank took money from the bank in a way which amounted to the taking of the money wholly illegally and without any authority and converted this money for his own use by purchasing property in his own name, it was held that the chairman being a trustee of all the moneys of the bank, the liquidator was *prima facie* entitled to be given possession of the property under this section 7. The Court will not however make an *ex parte* order for delivery of documents by the manager of a company to the official liquidator 8.

"Agent."

An agent who is in possession of properties belonging to a company under an agreement by which he was to advance money for working expenses has, in the absence of a contract to the contrary, a lien on such properties under s. 221 of the Indian Contract Act, and this section does not authorize the Court to deprive the agent of his possession of the security 9. An auditor is not an officer of the company within the meaning of this section 10. But a director who contracted to sell property to the company may be ordered to deliver possession thereof 11. Where in an application by the official liquidator under this section against the managing agent the latter took exception to the application on the ground that at the time of liquidation he was no longer a managing agent, it was held that the real test was whether the money came into his hands as managing agent. If it was so, he was liable to refund the money although he had ceased to be the managing agent at the time of liquidation 12.

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1. Palace Restaurants [1914] 1 Ch. 492, 500 ; but see *contra* Eastern Tavoy Minerals Corpn. (supra).
2. Findlay v. Waddell [1910] S. C. 670.
3. United Eng. Assurance Co., *ex p.* Hawkins [1868] 3 Ch. App. 787.
4. Re National Bank [1870] 10 Eq. 298.
5. Harsbans v. National Sugar Mills [1933] L. 437, 14 Lah. 68, 142 I. C. 766.
6. Ibid.
7. Peoples Bank of N. India v. Harkishen Lal [1936] L. 408.
8. Commercial Union Wine Co. [1866] 35 Beav. 35.
9. Chidambaram v. Tinnevelly S. Sugar Mills [1908] 31 Mad. 193 ; but see Harbans v. National Sugar Mills (supra).
10. Findlay v. Waddell (supra).
11. Oakwell Collieries Co. [1879] W. N. 65.
92. Venkatarama v. Sarvottama [1937] M. 401.

Receiver. If a receiver for the debenture-holders is appointed, he may be ordered to hand over to the liquidator such books and documents as relate to the management and business of the company and are not necessary to support the title of the debenture-holders 1.

In a voluntary winding up the liquidator can apply to the Court to exercise the above powers 2.

Where section is not applicable. The section should not be strained to bring within its purview persons who are not within its express words 3, or even the persons named in the section if there is a *bona fide* dispute as to the liquidator's rights. In such a case proceedings should be taken by action in the ordinary way 4. See notes to s. 188.

Power to order payment of debts by contributory. **186.** (1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance:

Provided that, in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Object of the section. The object of this section and similar sections is to avoid a double process, and to do complete justice in the winding up. It is only in rare instances, as where some of the parties concerned are not amenable to the jurisdiction in the winding up, that an action should be brought instead of making use of the jurisdiction given by the section 5.

Scope of the section. This section, (1) "is concerned", as observed by their Lordships of the Judicial Committee, "only with moneys due from a contributory, other than money payable by virtue of a call in pursuance of the Act. A debtor who is not a contributory is untouched by it. Moneys due from him are recoverable only by suit in the company's name; (2) it is a section which creates a special

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1. Engel v. South M. Brewing & Co. [1892] 1 Ch. 442.
2. Vide s. 216.
3. United E. & S. Assurance Co. (supra); re National Bank (supra).
4. Vimbos Ltd. [1900] 1 Ch. 470; re Palace Restaurants (supra).
5. Buckley, 10th ed. p. 395.

procedure for obtaining payment of moneys ; it is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights; (3) the power of the Court to order payment is discretionary. It may refuse to act under this section, leaving the liquidator to sue in the name of the company, and it will readily take that course in any ease in which it is made apparent that the respondent under this procedure, if continued, would be deprived of some defence or answer open to him in a suit for the same moneys" 1.

Statutory liability.

As soon as the list of contributories is settled, the liability of the contributory is founded on a different footing from the one on which it rested till then. Before the order for contribution is passed the liability is a contractual one, and subsequent to that order it is a new liability which may be described as a statutory liability 2.

Set off.

There are two provisions in this section for allowing set off. The one is contained in the proviso and is operative only as between contributories after all the debts are paid ; this is applicable to both limited and unlimited companies. The other is confined to unlimited companies and seemingly allows a set off of debts due from the company to the contributory (as distinguished from moneys due to him as a member) against that which under this section the Court can order him to pay, that is, debts due from the contributory and calls made *before* the winding up 3.

New machinery but not new liability.

Sub-section (1) does nothing more than create a new machinery to recover debts due by a contributory. It does not create new liabilities or confer new rights. It merely provides a summary procedure for enforcing existing legal liabilities. It cannot override the provisions of s. 86 of the Code of Civil Procedure by making an order under this section 4. The words "at any time" in sub-sec. (1) does not authorize the Court to order payment of a statute-barred debt ; they mean at any time in the course of the liquidation proceedings 5. The words "any money due from him or from the estate of the person whom he represents to the company" must be confined to money due and recoverable in a suit by the company and they do not include any moneys which at the date of the application under this section could not have been so recovered 6.

Regular suit may be brought.

A contributory can be required not only to meet calls but also to pay any debt which he owes to the company. But the Court is not bound to proceed under this section for recovery of a debt due from a contributory, and may, if so advised, direct the liquidator to file a regular suit for the purpose 7.

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1. Hansraj v. Dehra Dun Mussoree E. Tramways Co. [1933] P.C. 63 at pp. 65-66. "In those summary proceedings every objection is just as open to the person sought to be charged as it would have been if a bill had been filed"—these observations in Stringer's case [(1869) 4 Ch. App. 475 at p. 484] were approved. See also Shri Nath v. O. L. Benares Bank [1940] A. 544 F. B., [1940] A.L.J. 826, 192 I.C. 357 overruling Parshottam v. O. L. Gorakhpur Electric Supply Co. [1938] A. 613, [1938] All. 957.
2. Peoples Industrial Bank v. Mahesh [1926] O. 289, 93 I. C. 631 ; In re Whitehouse [1878] 9 Ch. D. 595.
3. Buckley, p. 396.
4. O. L. Dehra Dun Mussoree E. Tramways Co. v. Nabha State [1936] A. 826 (F. B.), 58 All. 742.
5. Srinarain v. Union Bank of India [1923] 74 I. C. 600.
6. Hansraj v. Dehra Dun Mussoree E. Tramways Co. [1933] P. C. 63. In this case the last cited case was approved by the Judicial Committee. This case is a continuation of Hansraj v. Asthana [1932] P. C. 240.
7. Kamta Prasad v. Industrial Bank [1915] 31 I. C. 54.

Meaning of "money due to the company."

A debt due on a promissory note by a contributory is "money due from him to the company"[1] within this section, and the Court has, upon a summary application, the power to direct the contributory to pay the money[2]. The Court. however has no jurisdiction to recover by summary process the money due from a debtor who is not a contributory[3]. An opinion expressed by the liquidation Judge in such a case with regard to set off does not operate as *res judicata*[3].

S. 43, Contract Act.

In order to make a contributory liable under this section for payment of debts other than calls, debts must be due from the contributory himself. Where the debts are due from a firm of which the contributory is a member, the payment of those debts cannot be enforced under this section, the provisions of s. 43 of the Indian Contract Act having no application to such a case[4].

Third party can not take advantage of the section.

A person to whom the liquidator has transferred a payment order made under this section against a contributory is entitled to invoke the summary jurisdiction of the Court under s. 199 for recovering the money[5]. But generally speaking, a third party cannot take advantage of the provisions of the section[6]; for it is no part of the Court's duty to help third persons who have purchased debts due to the company. So the Court cannot make a payment order under this section in respect of a debt which has been sold to a third person[7]. In a recent case in England Maugham J. however allowed an application of the Commissioners of Income Tax under the corresponding section (s. 165) of the English Act of 1908 asking for an order upon a contributory, who had received money from the liquidator on a distribution of surplus assets with notice that the liquidator had not provided for the super-tax payable by the company, to refund that amount to the credit of the liquidator so that the super-tax might be paid. This decision was upheld by the Court of Appeal[8].

Payment order—whether decree.

A payment order under this section is equivalent to a decree by reason of s. 199 *post* and enforceable as such and the provisions of the Code of Civil Procedure relating to the execution of decrees are applicable to the execution of such orders. Consequently the holder of a decree is entitled under the law to claim rateable distribution against the official liquidator as the holder of a payment order under this section[9]. But a payment order under this section made *ex parte* has been held to be not a decree and Art. 164, Sch. 1 of the Limitation Act has no application for setting it aside. Art. 181 refers to all applications for the making of which the Code of Civil Procedure gives authority[10].

See notes to s. 199, *post*.

A decree which is a nullity may be disregarded without any proceeding being taken to set it aside. So a payment order which is a nullity may be disregarded by a Court whose assistance is sought for its execution—*Gobinda Singh v. Union Bank of India, supra.*

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[1] Lahore Bank v. Kidar Nath [1915] 31 I. C. 746.
[2] Kamta Prasad v. Industrial Bank (supra).
[3] Industrial Bank v. Kesho Das [1919] 53 I. C. 653.
[4] Gobinda Singh v. Union Bank of India [1922] 71 I. C. 724.
[5] Parduman Singh v. Pioneer Jewellery Co. [1922] 3 L. L. J. 382, 67 I. C. 443.
[6] Doaba Bank v. Kundan Lal [1921] 59 I. C. 588.
[7] Saligram v. Indian Exchange Bank [1921] 60 I. C. 506.
[8] Aidall, Ltd. [1933] 1 Ch. 323.
[9] Radhesham Beopar Co. v. Karam Chand [1941] L. 273, 43 P. L. R. 310 dissenting from Lyallpur Bank v. Ramji Das [1940] O. 237, 15 Luck. 352, 185 I. C. 889.
[10] Hindusthan Bank v. Mehrajdin [1920] 55 I. C. 820.

Set off—unlimited company. In the case of an unlimited company the Court may allow a contributory a set off in respect of debts due to him from the company; but no set off will be allowed of a debt due from the company against calls made upon him in the winding up 1.

Limited company. In the case of a limited company a set off will not be allowed to a contributory against calls due from him in respect of any debt due to him from the company 2. He must pay his calls in full and then prove his debt 3, even if there is a special agreement that there shall be a set off 4. Where the contributory is a bankrupt, his trustee is however entitled to a set off against a demand for calls made by the liquidator 5. But where an insolvent company is a contributory and creditor of another insolvent company, no set off will be allowed 6.

Both. In the case of creditors of a limited or unlimited company the bankruptcy rules as to set off apply under which all claims provable in the winding up may be subject of set off, provided there is a mutuality 7 and that each claim result in a liability to pay money and not to return goods 8.

Court's discretion. The Court has a discretion in allowing set off, and if the claim against the company requires investigation, it may allow payment of calls to be enforced without waiting until the cross-claim has been investigated 9.

Voluntary winding up. S. 216 enables the Court to make an order under this section in a voluntary winding up. In an action by a voluntary liquidator to enforce a call the defendant cannot counter-claim for debt or damages 10. And if to the company's action commenced before the winding up the defendant has pleaded a set off, and before judgment the company goes into liquidation, the set off cannot be allowed 11.

Winding up under supervision. In an action against a member brought by the liquidator under supervision order, a debt due to the defendant previous to the voluntary resolution cannot be set off against a debt incurred after the resolution 12.

In any question of set off the two demands must be of such a character that the general principles of set off may apply 13.

Supplemental list. The Court will not settle a supplemental list of contributories in respect of the holders of fully paid shares simply to bring them within this section and give jurisdiction to enforce payment of debts due from them to the company 14.

For further cases see notes to the next section.

Though the making of an order of contribution under this section is not controlled by any rule of limitation, the enforcement of such an order is not equally so uncontrolled.

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1. West of England Bank, *ex p.* Branwhite [1879] 48 L. J. Ch. 463, 40 L. T. 652.
2. Mylapore P. B. Fund v. Arogiaswamy [1917] 32 M. L. J. 528, 38 I. C. 233.
3. Grissell's case [1866] 1 Ch. App. 528; Calisher's case [1868] 5 Eq. 214; Barnett's case [1875] 19 Eq. 449.
4. Black & Co.'s case [1873] 8 Ch. App. 254.
5. Re Duckworth [1867] 2 Ch. App. 578.
6. Auriferous Properties Ltd. [1898] 1 Ch. 691.
7. Mid-Kent Fruit Factory [1896] 1 Ch. 567.
8. Eberle's Hotel &c. Co. v. Jonas and Bros. [1887] 18 Q. B. D. 459.
9. Brasnett's case [1884] W. N. 175, 53 L. T. 569.
10. Government Security Co. v. Dempsey [1880] 50 L. J. Ch. 199.
11. Hiram Maxim Lamp Co. [1903] 1 Ch. 70.
12. Sankey Brook Coal Co. v. Marsh [1871] L. R. 6 Ex. 185.
13. Imperial Mercantile Credit Assn. [1867] 16 L. T. 314; cf. Middleton v. Pollock [1875] 20 Eq. 29; Ex *p.* Morier [1879] 12 Ch. D. 491.
14. Marlborough Club Co. [1868] 5 Eq. 365.

It is subject to the general law of limitation applicable to execution applications 1. An application by the liquidator filed within three years from the date of the winding up order, if otherwise properly made, under and within the provisions of this section, is not one which must be dismissed under s. 3 of the Limitation Act, as it is either an application made within time, or it is an application made for which no period of limitation is prescribed 2. In the last cited case at p. 66 their Lordship also observed : "The learned Judges in the present case took the erroneous view that once the winding up commenced there could be no further application of the rule of limitation in regard to any debt due to the company and not then already time barred. Their Lordships know of no justification for this view. In this respect there is no analogy between the position of a debtor to and creditor of a company in liquidation."

Limitation.

Power of Court to make calls.

187. (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Jurisdiction.

This section does not confer any higher jurisdiction on the Court to enforce the remedy which was not open to the company before the liquidation proceedings against a person who is not amenable to the jurisdiction. No order under this section can therefore be made against a sovereign Prince or a ruling Chief at all, and no question of any consent of the Governor General in Council can arise because such case does not fall in any of the three classes mentioned in sub-s. (2) of s. 86 C. P. Code, and no such jurisdiction exists in a British Court, unless the case can be brought within the scope of s. 86, C. P. C. 3.

Similarly where the defendant who is a shareholder in a company registered in an Indian State and is a resident of British India, does not appear before the State liquidation Court and does not submit to its jurisdiction, a call order, made against him by the liquidation Court, in the absence of an express agreement in the articles of association that the dispute with the shareholders should be settled by the State Court, is without jurisdiction and cannot be enforced in British India 4. It is necessary that the liquidator suing the defendant in British India should prove all necessary facts to establish his liability. It is also necessary that the call order for the particular amount was necessary and just. The mere fact that the call order was made does not amount to such proof 4.

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1. Peoples Industrial Bank v. Mahesh [1926] O. 289, 93 I. C. 631.
2. Hansraj v. Dehra Dun Mussoree E. Tramways Co. [1933] P. C. 63. In this case the meaning of the word "suit" in s. 3 of the Limitation Act was explained by their Lordships.
3. O. L. Dehra Dun Mussoree E. Tramways Co. v. Nabha State [1936] A. 826 F. B., 58 All. 742.
4. Modern Chemical Works v. Manimohan [1938] L. 559, 40. P. L. R. 819.

Cesser of directors' power.

After the winding up order the directors' power to make call *ipso facto* comes to an end. So where uncalled capital has been charged by the company in favour of debenture-holders, the Court has no jurisdiction, after the winding up order, to order either a receiver appointed in an action to enforce the debentures or the liquidator to make call in the winding up. The receiver in the action may however be empowered to take proceedings in the name of the liquidator for getting in the call 1.

Meaning of debts and liabilities.

The call may be made before or after ascertaining what claims against the company will be established as debts, and the words "debts and liabilities" mean estimated debts and liabilities 2. The list of contributories however must be settled first 3. In sanctioning a call the Court may allow payment by instalments 4.

When a company goes into liquidation and an official liquidator is appointed, the contributories are only liable to pay up the balance of their share money then uncalled as and when the Court is satisfied that the financial condition of the company is such that a call is necessary to discharge the liabilities of the company. The shareholder is not liable to pay one farthing of the uncalled share money until the Court has made such an order and the call then becomes a claim on the contributory 5.

Calls are independent of contract.

Enforceable summarily by motion.

Shareholders are liable to pay calls made in the winding up, although by the contract under which they took the shares the calls were only payable by instalments and the date of payment has not arrived 6. Provisions in the articles as to payment of interest on calls or as to the time and amount of payment do not apply to calls made by the liquidator 7. He can also enforce calls made by the directors before commencement of the winding up 8, for the section is not confined to original calls but includes unpaid calls made before the winding up as well as those made after the winding up. They are enforceable by a summary action on the motion of the official liquidator 9. As to the enforcement of an order against property situated within the jurisdiction of a District Court, see notes to s. 200.

Although as a matter of practice, when the High Court makes an order to enforce calls, it directs the contributory to pay to the Imperial Bank, that is purely a precautionary measure, and, if it becomes necessary in order to facilitate enforcement of the payment, the High Court by its Rules has power to make an order on the contributories to pay to the official liquidator direct 10. In the last cited case where a contributory paid the amount due from him to the then official liquidator in obedience to his requisition before an order was made by the Court under this section, Sir George Rankin C. J. held that in the absence of evidence that the then official liquidator misapplied the money, the contributory should not be asked to pay the money over again.

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1. Fowler v. Broad's P. N. Light Co. (infra).
2. Re Contract Corporation [1867] 2 Ch. App. 95 ; Barned's Banking Co. [1867] 36 L. J. Ch. 215.
3. Re English Bank of the River Plate [1892] 1 Ch. 391.
4. Law Guarantee Society [1909] 26 T. L. R. 565.
5. Sonardih Coal Co. [1930] A. 617, [1930] A. L. J. 1203, 124 I. C. 229.
6. Cordova Union Gold Co. [1891] 2 Ch. 580 ; Fowler v. Broad's P. Night Light Co. [1893] 1 Ch. 724.
7. Ibid & *re* Welsh Flannel & Tweed Co. [1875] 20 Eq. 360.
8. Westmoreland &c. Slate Co. v Feilden [1891] 3 Ch. 15.
9. Delhi Woollen Mills v. Durga Prasad [1911] 12 I. C. 958.
10. Montogomery v. Sikdar Iron Works [1932] C. 691, 36 C. W. N. 409.

No right of set off.

In a winding up although a shareholder who is a creditor of the company can prove in competition with the outside creditors, he cannot set off a debt owing to him by the company against a call 1, whether made before or after the commencement of the winding up 2, although in the former case there has been an agreement to do so 3. Where however a company in liquidation is both a creditor and a shareholder of another company in liquidation it cannot, even when insolvent, set off against calls made by the liquidator of the latter company a debt owing to it by that company 4, or take any dividend until it has paid up all calls due 5. In a common law action by liquidator for a call made before liquidation the defendant has no right of set off 6.

An agreement between a director and the company that any money which the former may pay under a guarantee of the company's overdraft at the bank shall be treated as payment made in advance of future calls, though such an agreement is within the company's powers and validly made, it will not enable the director to set off amounts so paid against a subsequent call made by the liquidator in a compulsory winding up 7.

Fully paid up shares.

Where a director has received in breach of trust a present of paid up shares from the company's vendors, he may be made liable for misfeasance, but he cannot be made liable as a contributory for unpaid shares 8.

Assignment of debts payable by company.

After the commencement of winding up a shareholder can assign a debt due to him by the company subject only to a right of set off by the company of all calls which may be made subsequent to the assignment and previous to the payment of the debt 9. But where the winding up was after the assignment, he is entitled to a dividend on the debt notwithstanding the non-payment by his assignor of calls due from him 10.

Remedy of members on the register.

Persons who are on the register at the commencement of the winding up are not entitled to resist the making of a call on the ground that they assert a right to have their names removed from the list; their remedy is to apply for suspension of the operation of the call 11.

Time of making call.

The Court will not wait until claims have been established before making a call, nor will it postpone calling up the full amount unpaid on the shares, or make such amount payable by instalments, where there is no reasonable doubt that the full amount will be required for paying the creditors 12.

On a summons for call 13 or other proceeding under the winding up order 14, the

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1. Grissel's case [1866] 1 Ch. App. 528 ; Gill's case [1879] 12 Ch. D. 755.
2. Barnett's case [1875] 19 Eq. 449.
3. Re Banksea Island Co. [1888] 1 Meg. 12 C. A.
4. Re Auriferous Properties Ltd. [1898] 1 Ch. 691.
5. Re Law Car &c. Corporation [1912] 1 Ch. 405.
6. Alliance Film Corpn. v. Knoles [1927] 43 T. L. R. 678.
7. Dillon's Claim [1886] 17 L. R. Ir, 341 C. A.
8. Re Innes & Co. [1903] 2 Ch. 254 ; see Carling's case [1875] 1 Ch. D. 115.
9. Re China Steamship Co. [1869] 7 Eq. 240.
10. Taunton, Delmard, Lane & Co. [1893] 2 Ch. 175.
11. Barned's Banking Co. [1867] 36 L. J. Ch. 215.
12. Ibid & Contract Corporation [1867] 2 Ch. App. 95.
13. London Marine Insurance Assn. [1869] 8 Eq. 176 ; Arthur Average Assn. [1877] 3 Ch. D. 522.
14. Arthur Average Assn., *ex p.* Hargrove & Co. [1873] 10 Ch. App. 542.

Effect of a winding up order. propriety or validity of the winding up order cannot be called in question 1. Winding up order is not however a judgment *in rem* and a stranger, *e. g.*., a purchaser from the liquidator, may dispute its validity 2.

Right of a shareholder. Where a shareholder has paid all calls which have become due, he is entitled to a dividend on the amount of any debt owing to him from the company *pari passu* with order creditors 3. A shareholder whose shares have been improperly forfeited and sold may prove for damages in competition with the creditors 4.

Deceased contributory. An order for payment of money against a contributory is valid when it is obtained in his life time. His estate can be made liable only when those who represent the estate are brought on the record before an effective order is made 5.

Costs. A contributory who petitions for and obtains a winding up order is entitled to the cost of his petition before payment of any call 6.

The debt due from a shareholder does not become recoverable until he is registered as a shareholder 7.

Voluntary windingup. The section does not apply to the case of a company which is being voluntarily wound up 8. But this section read with s. 216 enables the Court to make an order against a contributory for payment of calls in such a company.

Call order made in England is a foreign judgment. The Courts in India treat a call order made by the Court of Chancery in England upon a contributory of a company registered in England as a foreign judgment and will not allow the liability of a defendant sued upon such an order to be disputed, unless it be shown that the Court had no jurisdiction to make the order, or that the defendant had no notice of it or that it is not in its nature a final order 9.

Contract. The right to sue for calls does not arise from the failure to register the contract but from the fact of taking shares, and the liability thence arising to pay up the shares in cash can only be taken away by a duly registered contract and not by an agreement to register one 10.

A call is recoverable though barred. A call is recoverable although barred under art. 112 of the Limitation Act 11, for liquidation gives the official liquidator a cause of action 12. Just as a claim if brought by the company might be barred by limitation but not if brought by the official liquidator, so a claim which might be held to be barred by the Civil Procedure Code if brought by the company, can be brought by the official liquidator under the provisions of the Companies Act 12.

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1. Padstow Total Loss Assn. [1882] 20 Ch. D. 137, 145 ; Strick v. Swansea Tinplate Co. [1887] 36 Ch. D. 558 ; Sunderland Building Society [1888] 21 Q. B. D. 349 ; Overend, Gurney & Co., *ex p.* Oakes [1867] 16 L. T. 148.
2. Bowling & Welby's Contract [1895] 1 Ch. 663.
3. West of England Bank [1879] 12 Ch. D. 823.
4. New Chile Gold Mining Co. [1890] 45 Ch. D. 598.
5. People's Bank v. Ramchandra [1930] A. 503, [1930] A. L. J. 373, 52 All. 430.
6. General Exchange Bank [1867] 4 Eq. 138.
7. Matichand v. Delsukram [1893] 17 Bom. 469.
8. Nanak Singh v. Emp. [1915] 28 I. C. 28.
9. London B. & M. Bank v. Hormusji [1871] 8 Bom. H. C. 200 ; Do. v. Burjorji [1885] 9 Bom. 346.
10. London Celluloid Co. [1888] 39 Ch. D. 190.
11. Jagannath v. U. P. Flour Mills Co. [1916] 14 A.L.J. 349, 38 All. 347.
12. Dehra-Dum Mussoorie Tramways Co. 26 A.L.J. 256, [1928] A. 272, 52 All. 476.

The mortgagee of shares is not the trustee for the mortgagor when the former paid forced calls in a compulsory liquidation 1.

See notes to reg. 12—13 of Table A.

Power to order payment into bank.

188. The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into * * * the account of the official liquidator *in any scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934* instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Amendment.

By the Companies (Amendment) Act, 1936, the words "the Bank of Bengal, the Bank of Madras or the Bank of Bombay, as the case may be, or any branch thereof respectively to" have been omitted after the words "the same into." By the same Act the words in italics have been inserted.

For a list of the scheduled banks see pp. 286-87 *ante*.

"Purchaser."

The word "purchaser" does not mean any person who has purchased any goods from the liquidator or from the company; the word must he taken to refer to the word contributory, which immediately precedes it and means the purchaser of the interest of a contributory 2.

"Other persons" &c.

The words "or other persons from whom money is due" have a reference to a person from whom money is due under s. 185 3. There is no provision in this Act which enables the Court directing the winding up to recover or authorize the recovery of moneys in the hands of the person other than those expressly mentioned in s. 185 by summary process. Such orders if made are without jurisdiction and cannot be enforced. The only course open to the official liquidator in such cases is to institute regular suits 4. Persons who enter into contract with the liquidator during the course of liquidation do not come under s. 185, consequently an order directing them to pay the liquidator cannot be enforced under s. 185, nor can such an order be enforced under this section 5.

Enforcement of order—jurisdiction.

The words "any such order may be enforced in the same manner as if it had directed payment to the official liquidator" do not give jurisdiction to enforce an order against persons other than contributories or persons mentioned in s. 185. The most natural construction to place on these words is that if an order can be enforced which is an order directing payment to the official liquidator, the same order can be enforced if it directs payment to a bank. The company Judge has jurisdiction for the purpose of carrying out the liquidation, that is, the realization of the assets of the company and the payment of the creditors &c., but judicial decisions of matters which may arise with third parties owing to the transactions entered into by the liquidator is foreign to his jurisdiction 5.

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1. Bridhi Chand v. Standard Bank [1916] 42 Bom. 159.
2. John Brothers v. O. L. Agra Spinning & Weaving Mills Co. [1936] A. 808 (810), [1936] A. L. J. 741 ; O. L. Gorakhpur Electric Supply Co. v. Siemens (India), Ltd. [1940] A. 514, [1940] All. 730, [1940] A. L. J. 739.
3. Ibid ; Exp. Hawkins [1868] 3 Ch. App. 787 ; Vimbos Ltd. [1900] 1 Ch. 470.
4. Ibid ; Tarachand v. O. L. Peoples Bank of India [1915] L. 223, 29 I. C. 265, 46 P. R. 1915, 90 P. L. R. 1915.
5. John Brothers v. O. L. Agra Spinning & Weaving Co. (supra), at p. 810.

Regulation of account with Court.

189. All moneys, bills, hundis, notes and other securities paid and delivered into *the Bank where the liquidator of the company may have his account*, in the event of a company being wound up by the Court, shall be subject in all respects to the orders of the Court.

Amendment.

By the Companies (Amendment) Act, 1936, for the words "the Bank of Bengal, the Bank of Madras or the Bank of Bombay or any branch thereof respectively" the words in italics have been substituted.

Order on contributory conclusive evidence.

190. (1) An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings whatsoever.

Power to exclude creditors not proving in time.

191. The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Creditors proving after appointed time.

Whenever there are funds in Court or otherwise available, a creditor, although the time appointed for bringing in his claim has long elapsed, is invariably allowed to prove subject to terms as to costs and as regards dividends already paid 1. Where a creditor fails to bring in his claim by the date announced by the official liquidator, he is not precluded from coming in at a later stage, the only penalty in such case is that the claimant will be excluded from the benefit of any distribution made before the debt is proved 2.

Limitation.

The statute of limitation ceases to run against a creditor on a winding up order being made, and he is allowed to prove at any time before the company is disolved, but so as not to interfere with dividends already paid 3; but a proof in respect of claims statute-barred before the order is not allowed 4.

Damages for breach of contract.

Proof may be made for damages for breach of contract such as to buy goods, to purchase a business, to repair a shop, to give fully paid shares in satisfaction of a debt, or to employ a person as a servant of the company; and the claims may include damages sustained under a continuing breach of contract after the winding up commenced 5.

Director's claim.

The Courts do not look with favour on agreements between directors for their own advantage, and certainly not those which would severely prejudice other creditors in the event of liquidation. Where therefore a director claims a big sum of money on the strength of a promise made by a co-director, it is

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1. Harrison v. Kirk [1904] A. C. 1 (a case of administration suit); see also Ex p. Williams [1881] 16 Ch. D. 590; *re* Metcalf [1879] 13 Ch. D. 236; General Rolling Stock [1872] 7 Ch. App. 646.
2. Ibid & Pillay v. Ramsamy Chetty [1904] 27 Mad. 496.
3. General Rolling Stock Co. [1872] 7 Ch. App. 646.
4. River Steamer Co., Mitchel's Claim [1871] 6 Ch. App. 822; Fleetwood &c. Power Syndicate [1915] 1 Ch. 486.
5. For cases see Hals. p. 509.

a case in which formalities cannot be dispensed with, and if they have not been observed, the claim would not be allowed 1.

Policy-holder may prove.

A policy-holder who is insured against risk under the Employer's Liability Act or the Workmen's Compensation Act may prove in the liquidation of the insurance company, (1) for ascertained amounts due at the date of the winding up order, (2) for liabilities in the shape of weekly payments which had emerged before the date of the winding up order, and (3) for the value of the policy as a contract of indemnity in respect of the risk of fresh liabilities emerging after the date of the winding up order and during the unexpired period of the policy, such valuation to take place as at the date of the winding up order, not on the basis of an estimate of the contingencies, but upon the basis of a partial return of premium. He is not entitled to prove in addition in respect of liabilities which may have emerged under the policy between the date of the winding up order and the date of proving. The policy-holder in such a case is not entitled to prove by way of damages for the difference between the estimated cost of re-insuring the same risks for the same period in another company and the amount of premiums he would have paid under the policy 2.

All debts may be proved.

Debts which may de proved include all debts payable on a contingency and all claims against the company, present or future, certain or contingent, ascertained or otherwise 3. As to the measure of damages see the cases noted below 4.

Costs.

The costs of proving a debt are added to the amount of the debt. But if the creditor commences an action for the debt before the winding up and the liquidator continues to defend the action and fails, the costs are paid first out of the assets 5. The taxation of a solicitor's bill of costs against the company must be dealt with in the winding up 6, even if the work was done before the winding up 7.

Set off.

Where there have been mutual dealings between a creditor and the company the debts may be set off and the creditor can only prove or be made liable for balance 8. As to set off by a liquidator against an insolvent estate see the case noted below 9, and as to set off between two companies in liquidation see *National Live Stock Insurance* Co. 10.

What debts can or cannot be proved.

Every liability of a company, however difficult of valuation, is provable in the winding up, unless declared by the Court as incapable of being fairly estimated 11. Claim under contracts made on behalf of a company before its registration or before it is entitled to commence business cannot be proved for, unless the contracts have been adopted by the company 12.

Adjustment of rights of contributories.

192. The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

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1. Hargopal v. Peoples Bank of N. India [1935] L. 691.
2. Law Car and General Insurance Corpn. [1913] 2 Ch. 103.
3. S. 228.
4. *Re* Vic Mill [1913] 1 Ch. 465 ; *re* Law Car and Co. [1913] W.N. 157.
5. Wenborn & Co. [1905] 1 Ch. 413.
6. Foss Bilborough & Foss [1912] 2 Ch. 161.
7. Palace Restaurants Ltd. [1914] 1 Ch. 492.
8. H. E. Thorne and Son [1914] 2 Ch. 438.
9. Peruvian Ry. Co. [1915] 2 Ch. 144, 150, 442.
10. [1917] 1 Ch. 628.
11. Hardy v. Fothergill [1888] 13 App. Cas. 351.
12. National Motor Mail Coach Co., Clinton's Claim [1908] 2 Ch. 515 C.A.

Principle of distribution.

In adjusting the rights of the contributories and distributing the surplus, the liability of the ordinary shreholders for the unpaid balance of their shares must not be disregarded; and after discharging all debts and liabilities and repaying to the ordinary and preference shareholders the capital paid on their shares, the assets ought to be divided among the shareholders, in the absence of any other provision in the memorandum or the articles, not in proportion to the amounts paid on the shares, but in proportion to the shares held[1].

It cannot be said that the creditors have been paid in full until they have got interest on their outstanding debts. So the preference shareholders cannot get anything before the said interest is paid. But the Court is not bound to give the creditors their contractual rate of interest[2].

Where the members of a company in liquidation have been assessed to surtax in respect of their incomes from the company in the name of the company, and the liquidator has paid the surtax, he is bound in distributing any surplus among the members, to bring into account the surtax so paid by him against the amounts receivable by the shareholders in respect of the income on which the surtax was assessed. The surtax cannot be treated as a liability of the company payable before the ascertainment of the amount available for distribution[3].

On whom calls may be made.

The Court may make calls on any of the contributories for the purpose of adjusting rights of the contributories among themselves[4]. The holders of fully paid shares are contributories[5]. Calls may be made on the holders of partly paid shares for the purpose of equalizing the rights between them and the fully paid shareholders[6].

Participation in dividend.

A shareholder cannot participate in the distribution until he has paid all calls due[1]. The right of a liquidator to require payment of money due from a contributory before he is allowed to participate in a dividend only applies where both amounts are due at the commencement of the winding up[7].

Set off.

Whether a company is limited or unlimited, when all the creditors have been paid in full, any money due on any account whatsoever to a contributory from the company may be allowed to him by way of set off against any subsequent call. When the creditors have been paid in full, any surplus is to be distributed amongst the contributories according to their rights *inter se* as adjusted by the Court[8].

Provision in memo. and articles.

If the memorandum and articles of association contain no provision as to how surplus assets are to be divided, then subject to the terms on which any capital has been issued, the surplus assets are divided and losses are borne in proportion to the nominal amounts of the shares and not to the sums paid up[9]. Where however some shareholders have paid up more than others, the Court will adjust the amounts until all have paid up in the same proportion, and the surplus thus arrived at will then be distributed in proportion to the nominal

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1. Birch v. Cropper (infra).
2. Dehra Dun Mussoree E. Tramways Co. [1934] A. 189, 56 All. 423, 147 I. C. 682; see also Devi Ditta Mal v. O. L. Amritsar Bank [1921] L. 346, 59 I. C. 69.
3. Alexander Drew & Sons [1934] 51 T. L. R. 113.
4. S. 187.
5. Anglesea Colliery Co. [1866] 2 Eq. 379, 1 Ch. App. 555; National S. B. Assn. [1866] 1 Ch. App. 547.
6. Ibid and Anglo-Continental Corpn. [1898] 1 Ch. 327.
7. Grissell's case [1866] 1 Ch. App. 528.
8. Birch v. Cropper [1889] 14 App. Cas. 525; N. W. A. Railway [1900] 2 Ch. 882.
9. Birch v. Cropper (supra); Wakefield Rolling Stock Co. [1892] 3 Ch. 165.

amounts 1. The rights may be adjusted by making larger returns to those who have paid larger amounts 1, or by making calls 2.

A provision in the articles as to how dividends are to be distributed while the company is a going concern does not *per se* govern or affect the distribution of surplus assets in the winding up 1. Where in the articles of association it was provided that the surplus assets were to be applied in the first place in repaying the holders of preference shares the amount paid thereon and the residue belonged to the holders of ordinary shares, it was held that the arrears of preference dividend could not be treated as 'debts' and therefore to be paid out of the assets of the company before the surplus assets were ascertained 3.

Sometimes it may be necessary to make a call upon those who have paid less in order to repay those who have paid more for equalization 4. If the articles state that the loss is to be borne in proportion to the amount paid, the liquidator should make such calls as will make all the shares paid up to the same extent, and the assets will then be divisible proportionately to the number of shares 5. But an article providing that the loss is to be borne by the members in proportion to the capital paid up, or which ought to have been paid up, at the commencement of the winding up, on the shares held by them respectively, excludes the principle laid down in *ex parte Maude* 6, and in such a case the liquidator cannot make calls for the purpose of equalization 7. Each case however depends on the words used, and decided cases are of little help in interpreting a different set of words 8.

If the shares are of different amounts, and the surplus is divisible without regard to the amount of shares, the presumption, in the absence of express words, is that this means the surplus after repaying capital as well as debts 9.

Dividend for insolvent contributory.

It is a well established principle that where a person is entitled to participate in a fund, he is also bound to make a contribution in aid of that fund. He cannot be allowed to participate unless and until he has fulfilled his duty to contribute 10. But where the debtor has died insolvent before commencement of the winding up, the amount to be contributed by representatives as a term of sharing in the distribution is the proper dividend on and not the full amount of the debt 10.

Right of fully paid shareholders.

If after payment of the debts there are surplus assets, the fully paid shareholders are, except where the articles provide otherwise 11, entitled to receive the difference between the amount paid on their shares and that paid on the other shares 12. For the purpose of distribution of surplus assets they ought to be placed on the list of contributories 13.

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1. Driffield Gas Light Co. [1898] 1 Ch. 451 ; London India Rubber Co. [1868] 5 Eq. 519 ; New Ring Mills [1939] C. 126, [1938] 2 Cal. 533.
2. West Coast Gold Fields [1906] 1 Ch. I, C.A.
3. New Ring Mills [1939] C. 126, [1938] 2 Cal. 533.
4. Ex parte Maude [1871] 6 Ch. App. 51.
5. Anglo-Continental Corpn. [1898] 1 Ch. 327.
6. Ex p. Maude (supra).
7. Kinatan (Borneo) Rubber Ltd. [1923] 1 Ch. 124.
8. Will v. United Lankat Plantations Co. [1912] 2 Ch. 571, [1914] A.C. 11.
9. Ramel Syndicate Ltd. [1911] 1 Ch. 749.
10. Peruvian Ry. Construction Co. [1915] 2 Ch. 442.
11. Doncaster P. B. Society [1867] 4 Eq. 579 ; Kinatan Rubber Ltd. [1923] 1 Ch. 124.
12. Scinde, Punjab and Delhi Corpn. [1870] 6 Ch. App. 53n.
13. Aidall, Ltd. [1933] 1 Ch. 323.

Where payment is made in advance of calls.

Where inequality in the amounts paid up arises from the shareholders having made payments in advance of calls, each shareholder, for the purpose of equalizing, is entitled to be repaid the amount advanced with interest at the agreed rate up to the date of payment, before any payment is made in respect of the other shares ranking *pari passu* with his shares, in repayment of capital 1.

Surplus after repayment of capital: how divisible.

Where after repayment to the shareholders of all fully paid up capital, there is still a surplus remaining for distribution, then subject to the articles of association and the terms of issue 2, the surplus so far as it represents capital, is divisible in proportion to the nominal amount of shares, whether they are preference or ordinary shares and whether at the winding up they are partly or fully paid up 3. The surplus so far as it represents undivided profits is in some cases divisible among the shareholders as if it were profit available for dividend 4, but in other cases it must be treated as capital 5. Unless the articles so provide, the holders of shares issued at a premium are not in a winding up entitled to have the premium repaid 6. Because shareholders are entitled to a preferential dividend it does not follow that they are entitled to preference in payment of the capital 7.

"So long as there are assets undistributed in the liquidation, it remains open to the Court to correct any mistakes or injustice due to falsified estimates or other unforeseen incidents arising in a prolonged and difficult administration" 8.

Preference dividend in winding up.

Where the articles contain no express provision as to payment of arrears of the preference dividend in a winding up, then if on the true construction of the articles, the right of the preference shareholders to receive preference dividend whilst the company is a going concern is conditional upon such dividend being declared, they have no right to receive any arrears or deficiency of such dividend in a winding up, even though the distributable assets include or in part represent accumulated profits 9. If however the articles are so framed that profits earned belong to the members irrespective of dividends being declared, the distributable assets in a winding up, so far as representing accumulated profits, will be divisible among the members according to their rights in profits, and the preference shareholders will first be entitled to payment thereout of any deficiency of their preference dividend, and the balance will belong to the ordinary shareholders 10. For other instances see the cases noted below 11.

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1. Wakefield Rolling Stock Co. [1892] 3 Ch. 165 ; Exchange Drapery Co. [1888] 38 Ch. D. 171.
2. Mutoscope &c. B. Syndicate [1899] 1 Ch. 896 ; but see Anglo-Continental Corpn. [1898] 1 Ch. 327.
3. Birch v. Cropper [1889] 14 App. Cas. 525 ; Espuela Land & Cattle Co. (infra), and Fraser & Chalmers, Ltd. (infra).
4. Re W. J. Hall & Co. [1909] 1 Ch. 521.
5. Crichton's Oil Co. [1902] 2 Ch. 86 C. A.
6. Driffield Gas Light Co. [1898] 1 Ch. 451.
7. N. W. Argentine Ry. [1900] 2 Ch. 882.
8. City of London Insurance Co. [1932] 1 Ch. 226, 230-31.
9. Buckley, 10th ed. p. 404 and Odessa Water Works Co. [1901] 2 Ch. 190 n. ; Circhton's Oil Co. (supra) ; Accrington Corpn. Tramways Co. [1909] 2 Ch. 40.
10. Buckley, 10th ed. p. 404 ; Bridgwater Navigation Co. [1891] 1 Ch. 155, 2 Ch. 317 ; Bishop v. Smyrna Ry. Co. [1895] 2 Ch. 265 ; see also Springbok Agricultural Estates [1920] 1 Ch. 563.
11. Espuela Land Co. [1909] 2 Ch. 187 ; Fraser and Chalmers Ltd. [1919] 2 Ch. 114 ; Anglo-French Music Co. [1921] 1 Ch. 386 ; National Telephone Co. [1914] 1 Ch. 755, 772 ; Will v, United L. Planatations [1912] 2 Ch. 571, affirmed in [1914] A. C. 11.

Where the memorandum or the articles provide that the preference shareholders are entitled to payment of capital in priority to all other shares in the distribution of surplus assets, they are entitled to share them *pari passu* with the ordinary shareholders 1. In the last cited case at p. 155 Lord Hanworth, M. R. observed: "We start therefore the consideration of this question with the two principles in our minds that the corporators have entered into a contract by which they become partners, and that when there are surplus assets left over they are to be dealt with as between the members on the basis of equality, whatever were the original or limited rights of the preference shareholders earlier."

In the absence of express provision to the contrary in the articles, preference shareholders are entitled to share with the ordinary shareholders *pari passu* in the distribution of the surplus assets. The mere fact of this priority as to cumulative dividend and return of capital will not disentitle them to such participation in the surplus assets 2.

Meaning of "surplus assets."

The words "surplus assets" mean, where there is a loss, "assets remaining after due equalization of the capital accounts" 3 or sums payable by the shareholders who have not paid in full 4. But where the general assets are sufficient to enable debts &c., to be paid and the capital accounts to be equalized without any call, there is no capital called or treated as called for the purpose of satisfying equities; in such a case, the only capital paid is that paid before the winding up 5.

Apart from any question of equalizing capital accounts, the expression "surplus assets" may mean "assets remaining after payment of debts and costs" or it may mean "assets remaining after payment of debts and costs and return of all paid up capital" 6.

Where the memorandum of association of a company provided that the preference shareholders should be entitled in a winding up to such a share of the surplus assets as would provide for the holders of preference shares an amount per share equal to one-half of the amount per share provided for the holders of ordinary shares, but so that the total sum so provided for the holders of the preference shares would not exceed five shillings per share, the preference shareholders being entitled to no further participation in the profits or assets, it was held that the expression "surplus assets" meant what was left after the payment of debts and the repayment of the whole of the preference and ordinary capital 7.

Distribution in specie.

It is common to introduce provisions in the memorandum and articles of association for division of surplus assets in specie. For the effect of such a provision see the case noted below 8.

Profits earned after commencement of the winding up are divisible as capital 9.

Discount.

Any discount on shares unlawfully issued at a discount is treated as capital unpaid, which may be so regarded in adjusting accounts, or may be called up to adjust the rights of contributories 10.

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1. William Metcalfe & Sons [1933] 1 Ch. 142 C. A.
2. John Dry Steam Tug Ltd. [1932] 147 L. T. 493.
3. Anglo-Continental Corpn. (supra) at p. 334.
4. Welsh Whisky Distillery [1900] W. N. 59, 16 T. L. R. 246; but see Kinatan Rubber Ltd., (supra).
5. Mutoscope Syndicate [1899] 1 Ch. 896.
6. Buckley, p. 406; Chrichton's Oil Co. (supra); New Transvaal Co. [1896] 2 Ch. 750; Ramel Syndicate [1911] 1 Ch. 749.
7. Dunstable P. Cement Co. [1932] 48 T. L. R. 223.
8. March v. Martin [1880] W. N. 111.
9. Bishop v. Smyrna Ry. Co. [1895] 2 Ch. 596.
10. Welton v. Saffery [1897] A. C. 299.

For distribution an order of the Court is necessary; but in a voluntary liquidation the liquidator adjusts the rights of the contributories without reference to the Court [1].

If too much has been paid to a shareholder he may be ordered to refund the amount [2].

193. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

Power to order costs.

Priority of costs, charges, &c.

It was held by the House of Lords in 1872 that although in a compulsory winding up there was no statutory provision, as in the case of a voluntary winding up [3], that all costs, charges and expenses properly incurred in the winding up, including the liquidator's remuneration, be payable out of the assets in priority to all other claims, the same principle would be applied [4].

Distribution.

After the costs, charges and expenses have been paid, the assets are to be applied in payment of the company's debts and liabilities to the creditors. When the creditors have been paid in full, any surplus is to be distributed amongst the contributories according to their rights *inter se* as adjusted by the Court [5].

Remuneration.

As regards the liquidator's remuneration the rule is, that first the costs of the petition for winding up, next the costs of the winding up, and then the remuneration of the liquidator are to be paid [6]. In the case noted below [7] the Court in its discretion allowed the voluntary liquidator to retain the remuneration received by him before the date of the notice of the assessment of income-tax. The remuneration of a receiver and manager appointed in a debenture-holder's action is paid in priority to the debt incurred by him with the Court's sanction [8].

Costs in litigation.

Where in a litigation an order has been made that costs shall be paid out of the assets of the company or by the liquidator with leave to retain them out of the assets, the amount is payable forthwith without waiting to see if the funds will be sufficient to pay all costs incurred in the winding up, and if the liquidator pays such costs he may rrepay himself at once [9].

The costs ordered to be paid out of the assets come before the general costs of the winding up [10]. If the liquidator continues proceedings commenced before the winding up order, the whole costs including those incurred before the order are costs of the winding up [11].

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1. S. 211.
2. Birkbeck P. B. Building Society [1915] 1 Ch. 91.
3. S. 217.
4. Webb v. Whiffin [1872] L. R. 5 H. L. 711.
5. Birch v. Cropper [1889] 14 App. Cas. 525, and see notes to the previous section.
6. Re Massey [1870] 9 Eq. 367; Dronfield Silkstone Co. [1883] 23 Ch. D. 511; London Metallurgical Co. [1895] 1 Ch. 758 and see Sanitary Burial Assn. [1900] 2 Ch. 289; re Trueman's Estate [1872] 14 Eq. 278; but see New York Exchange [1893] 1 Ch. 371.
7. Beni-Felkai Mining Co. [1934] Ch. 406.
8. Hoffman v. Boynton [1910] 1 Ch. 519.
9. London Metallurgical Co. (supra).
10. Staffordshire Gas &c. Co. [1893] 3 Ch. 523.
11. London Drapery Stores [1898] 2 Ch. 684.

Solicitor's costs. As to the priority of solicitor's costs and other costs generally see Buckley, 10th ed. pp. 407-8. The costs are however generally in the Court's discretion, and if unfounded charges are made or the petitioner's conduct is unsatisfactory or his debt small, an order may be made without costs 1.

Dissolution of company. **194.** (1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall be reported within fifteen days of the making thereof by the official liquidator to the registrar, who shall make in his books a minute of the dissolution of the company.

(3) If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which he is in default.

Effect of dissolution. Dissolution puts an end to the existence of a company 2. "A company which has been dissolved," observed Viscount Cave, "no longer exists as a separate entity capable of holding property or of being sued in any Court" 3. It prevents any proceeding being taken against promoters, directors or officers of the company in respect of any misfeasance or breach of trust 4, or a creditor proving a debt against the company 5.

Liquidator's liability. When a company is dissolved the statutory duty of the liquidator towards the creditors and contributories is gone ; but if he has committed a breach of his duty to any creditor by distributing the assets without complying with the requirements of the Act, he is liable in damages to the creditor 6.

Effect of dissolution upon pending proceedings, &c. A judgment obtained against a company after its dissolution is invalid, and the solicitor acting for the company is liable personally to pay the costs of the action from the date of the dissolution and consequent revocation of his authority 7. After dissolution, however, the Court has jurisdiction to make an order upon an application made but not heard before the dissolution 8.

Bona vacantia. Where a company is dissolved, its personal property including its right against a bankrupt's estate in respect of debt vests in the Crown as *bona vacantia* 9. As to whether a debt to a company is extinguished by its dissolution see the last noted case. But estates and interests in land do not necessarily vest in the Crown. In such cases the reversion is accelerated 10. It has however been

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1. Ibo Investment Trust [1904] 1 Ch. 26.
2. Salton v. New Beeston Cycle Co. [1900] 1 Ch. 43.
3. Employers' Liability Assurance Corpn. v. Sedgwick Collins & Co. [1927] A. C. 95.
4. Coxon v. Gorst [1891] 2 Ch. 73.
5. Westbourne Grove Drapery Co. [1879] 39 L. T. 30.
6. Pulsford v. Devenish [1903] 2 Ch. 625 ; Innes & Co. [1903] 2 Ch. 254.
7. Youge v. Toynbee [1910] 1 K. B. 215 C. A.
8. Whiteley's Exerciser v. Gamage [1898] 2 Ch. 405.
9. Re Higginson & Deane [1899] 1 Q. B. 325 ; see notes under ss. 208E & 209H.
10. Hastings Corpn. v. Letton [1908] 1. K. B. 378.

held in a recent case that the doctrine of *bona vacantia* extends to leaseholds and that where they are mortgaged the equity of redemption passes to the Crown upon dissolution of the company [1]. The principle under which the Crown takes *bona vacantia* is that the King is the owner of every thing which has no other owner [2].

Special order.

To relieve the directors and others from personal liability incurred by carrying on business after the company has been dissolved, the Court may make a special order, and it will not be made in a flagrant case [3].

Solicitor's authority is determind.

A solicitor's authority to represent the company is determined by its dissolution [4] and if he continues to act or purports to act for a company not in fact incorporated [5], he will be liable to the other party for costs.

No misfeasance proceedings after dissolution.

After dissolution no proceedings can be taken under s. 235 for misfeasance [6]. But a creditor has remedy in damages against the liquidator, if with knowledge of the debt he has wilfully or negligently distributed the assets without providing for such debt [7].

Liquidator can perform formal acts after dissolution.

Although when a company has been dissolved it ceases to exist for all purposes and its officers including the liquidators are *functus officio* [8], yet even after dissolution the liquidator can complete a formal act like giving a transfer in writing for a decree which has been already transferred by him while he was still a liquidator [9]; for a decree is not an actionable claim within the meaning of the Transfer of Property Act, and therefore an assignment of a decree need not be in writing, though for the purposes of execution O. 21, r. 16, C. P. C., requires the transfer to be in writing.

As to the dissolution of a company under voluntary liquidation see. ss. 208E and 209H and notes.

Extraordinary Powers of Court.

Power to summon persons suspected of having property of company.

195. (1) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

(2) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require him to produce any documents

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1. In re Wells [1933] 1 Ch. 29.
2. Ibid at p. 43; see also Dyke v. Walford [1846] 5 Moo. P. C. C. 434.
3. Re Brown Bayley's Steelworks [1905] 21 T. L. R. 374.
4. Salton v. New Beeston Cycle Co. (supra).
5. Simmons v. Liberal Opinion Ltd. [1911] 1 K. B. 966.
6. Coxon v. Gorst (supra).
7. Argylls Ltd. v. Coxeter [1913] 29 T. L. R. 355; Pulsford v. Devenish (supra).
8. Ramchandra v. Kandasami [1895] 18 Mad. 498; Pinto Silver Mining Co. [1878] 8 Ch. D. 273; London & C. M. Insurance Co. [1879] 11 Ch. D. 140, 144; Westbourne Grove Drapery Co. (supra); Coxon v. Gorst (supra).
9. Krishnasami v. Kuruppan [1928] M. 478, 27 M. L. W. 538. See also Afzal v. Ram Kumar [1886] 12 Cal. 610; Dagdu v. Vanji [1900] 24 Bom. 502; Gobinda v. Ranga [1921] M. 113.

in his custody or power relating to the company ; but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

Object of the section.

This section was enacted to enable the Court in charge of liquidation proceedings to examine the persons mentioned therein to ascertain *inter alia* their conduct with regard to the management of the company and to find out the financial condition and the assets. In these proceedings there is no contest between two parties and therefore the proviso to s. 132 of the Evidence Act does not confer any special privilege on the persons so examined [1]. "The proceeding is a private examination which the Court sanctions in order that the liquidator may obtain the necessary information to enable him to proceed in the winding up, and for many reasons it is most undesirable that the opposing party in the litigation contemplated by the liquidator should be allowed to be present at a proceeding which is a proceeding for the purpose of informing the officer of the Court and the Court what course ought to be pursued" [2].

Powers of Court.

The powers of the Court under this section are very wide, and it is not necessary that the Court must first determine that the person called upon to furnish the information does actually possess that information. If the Court has reason to think, or even an allegation is made that a certain person is in possession of information which would be useful for the purposes of the winding up, the Court can call upon him to appear in Court and can examine him [3].

Examination by Court.

An order for examination under this section may be obtained by the liquidator or by a contributory. The Court can however of its own motion direct such an examination to be held [4]. S. 215 (now s. 216) enables the Court to pass orders under this section in a voluntary winding up [5] ; but such orders will be made only under exceptional circumstances [5].

Court's discretion.

The examination is, as a rule, entrusted to the liquidator, but the Court may commit the whole or some part of the examination to a creditor or contributory [6]. The Court can give the conduct of the examination to a petitioning creditor where the liquidator refuses to act or has not the means to act. The Court has discretion to allow a creditor to attend even where the official liquidator has the conduct of the examination. But such a discretion ought not to be exercised except in very extreme cases [7].

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[1] Ramchand v. King-Emp. [1926] L. 383, 27 Cr. L. J. 1382, 98 I. C. 599.
[2] Haddock's case [1902] 2 Ch. 73,(80) ; see Grey's Brewery Co. [1884] 25 Ch. D 400.
[3] Seth Haribans v. National Sugar Mills (infra).
[4] Land Securities Co. [1894] W. N. 91, 42 W. R. 624, 1 Mans. 369.
[5] Property Insurance Co. [1914] 1 Ch. 775, 779.
[6] Silkstone &c. Iron Co. [1881] 19 Ch. D. 118.
[7] Moolla Dawood Cotton Manfg. Co. [1924] R. 24, 1 Rang. 384.

If the Judge has made an order for an examination, the Court of appeal will not generally interfere with his discretion[1], unless the order appears to be oppressive[2].

It is in the discretion of the Court conducting the winding up to determine whether it will exercise the powers vested in it by this section, but the discretion must be exercised judicially and not without consideration[3]. The order cannot be obtained as of right[4].

If a party is entitled to take part in or to conduct an examination, the ordinary rule must prevail that he is entitled to do so with the help of counsel[5]. But it is a matter entirely within the discretion of the Court whether the services of counsel should be allowed to an official liquidator[5].

Jurisdiction.

The Court has jurisdiction to order the examination to be held in open Court, but the jurisdiction should be exercised in very exceptional circumstances. For instance, a person not charged with fraud should not be examined in open Court[6]. As a rule the examination will be held in private and creditors and contributories will not be entitled to attend, unless they have obtained leave of the Court[7].

It must be just and beneficial.

Before granting an application under this section the Court ought to be satisfied that the inquiry is just and beneficial for the purposes of the winding up and not merely intended to harass and annoy the directors and managers[8], or for the purpose of advancing the individual interest of a single contributory[9].

What questions will be answered by the witness.

The witness must answer questions even if they relate to matters of hearsay[10], but he need not answer questions as to matters which might incriminate him or as to matters involving professional confidence[11]. The only ground on which a witness summoned to attend for examination can contest the validity of the summons is want of jurisdiction to issue it or to pass the order[12].

Inspection & making use of deposition.

The official liquidator is not entitled in a petition filed by him in Court, to make use of facts elicited in course of examination of persons held under this section copies whereof has been obtained by him under Rule 174 (now Rule 198) of Chap. XXXI of the Original Side Rules of the Calcutta High Court. The depositions so obtained are to be regarded as private documents 1. A deponenr who is a defendant in a suit brought by the official liquidator is, however, entitled to obtain a copy of his own deposition, upon his counsel undertaking on his behalf to prevent communication of his deposition to his co-defendants or their solicitors or counsel 1.

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[1] Joseph Hargreaves Ltd. [1900] 1 Ch. 347 ; Gold Co. [1879] 12 Ch. D. 77.

[2] Re Metropolitan Bank [1880] 15 Ch. D. 139.

[3] Harkishen Lal v. Saraswati [1915] 28 I. C. 286 ; Gold Co. (supra) ; Joseph Hargreaves Ltd. [1900] 1 Ch. 347.

[4] Metropolitan Bank [1880] 15 Ch. D. 139.

[5] Seth Haribans v. National Sugar Mills [1933] L. 8, 130 I. C. 407.

[6] Property Insurance Co. [1914] 1 Ch. 775 ; Leitner Electrical Co. [1916] 32 T. L. R. 474.

[7] Grey's Brewery Co. [1883] 25 Ch. D. 400 ; but see Gold Co. [1879] 12 Ch. D. 77.

[8] Harkishen Lal v. Saraswati (supra) ; Seth Haribans v. National Sugar Mills [1931] L. 8. 130 I.C. 407.

[9] Imperial C. W. Corpn. [1886] 33 Ch. D. 314 ; British Building Stone Co. [1908] 2 Ch. 450.

[10] Ottoman Co. [1867] 15 W.R. (Eng.) 1069.

[11] Silkstone &c. Iron Co. (supra) ; North Australian Territory Co. [1890] 45 Ch. D. 87.

[12] Silkstone &c. Iron Co. (supra).

A witness may not inspect and take copies of the deposition of his examination under this section, unless he has obtained the leave of the Court 2. In the undernoted case 3 Mr. Justice Buckland held that in the interests of criminal justice the Court should allow a public officer charged with the investigation of criminal offences, such as a Deputy Commissioner of Police, to inspect the depositions of a person, who is believed to be involved in a criminal offence, under this section and to inform himself of any thing that may come to light on such inspection ; he cannot however take copies of the desposition but only notes, and in doing so he cannot reproduce verbatim any portion of the deposition, however brief.

Production of document.

The witness should be examined first and it would depend upon the result of the examination whether a further order for the production of any and what relevant documents ought properly to be made 4.

Delivery of document.

Delivery of a document without prejudice to an alleged right of lien does not involve its admission and does not in any way prejudice it if it exists 9. If delivery is necessary for the purposes of a voluntary winding up, the liquidator is entitled to the delivery 5. Where there is no good right of lien properly so called, there may be a right of retention on the ground of implied contract 5.

Liquidator's powers.

A liquidator while so acting is an officer of the Court charged with the duty of investigating the affairs of the company and the acts of its past managing agents and directors, and he is entitled to be given all reasonable information as to past transactions. Any creditor who refuses does so at his own peril and in the ultimate resort can be summoned under this section, and if necessary, arrested 6. But the liquidator cannot use a summons under this section to obtain relief against a stranger, for instance, by seeking to enforce a claim against an alleged debtor to the company or asking for rescission of the contract 7.

Where order is made.

Orders have been made to compel information from—the managing clerk of a bank with which a contributory had an account ; the broker by whom a transfer was made in a case in which the transferee was an infant ; the sister and nephew of a contributory who had been served with a balance order ; the mother-in-law of a contributory ; a creditor of the company who claimed commission for service rendered and work done as agent of the company ; brokers who entered into contracts with the company 8. But a mere creditor cannot be examined 9.

The persons examined under this section will not be allowed their costs 10.

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1. Kamal Bros. v. Sunil Kumar [1940] C. 488, [1940] 1 Cal. 28, 44 C.W.N. 512.
2. Merchant's Fire Office [1889] 1 Ch. 432 ; see also Imperial C. W. Corpn. [1886] 33 Ch. D. 314.
3. Regent Park Syndicate [1930] C. 521, 57 Cal. 424, 126 I.C. 405.
4. Maville Hose, Ltd. [1939] 1 Ch. 32.
5. Findlay v. Waddell [1910] S.C. 670.
6. Tulsidas v. Industrial Bank [1931] B. 2, 54 Bom. 718, 32 Bom. L. R. 953, 127 I. C. 82.
7. Centrifugal Butter Co. [1913] 1 Ch. 188.
8. Buckley, 10th ed. pp. 413-14.
9. Mercati's case [1868] 5 Eq. 22.
10. T. F. Brown & Co. [1887] 14 Cal. 219.

Appeal. Under s. 202 an appeal lies from an order under this section [1]. But the Calcutta High Court (C. C. Ghose & Buckland, JJ.) held that an order under this section directing the directors to appear before the Court for examination is not a judgment within cl. 15 of the Letters Patent and therefore not appealable [2].

Power to order public examination of promoters, directors, etc.

196. (1) When an order has been made for winding up a company by the Court, and the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company, in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, manager or other officer of the company shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director, manager or other officer thereof.

(2) The official liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person

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[1] Harkishen Lal v. Saraswati (supra); Seth Haribans v. National Sugar Mills [1931] L. 8, 130 I. C. 407; but see Silkstone &c. Co. (supra).

[2] Madan v. Sachindra [1928] C. 295, 55 Cal. 262.

examined, and may thereafter be used in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court, being an official referee, master, registrar or deputy registrar, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

Distinction between this section and the previous one.

The two sections have quite different scopes. S. 195 is intended to be used for the purposes of promoting the liquidation proceedings, while s. 196 is primarily intended to investigate the conduct of those who have been charged with its affairs 1. It appears that under the previous section the Court can of its own motion for the purpose of obtaining information summon and examine the persons mentioned therein. But under the present section, before the Court takes any action, the official liquidator must make an application to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by a director or officer after its formation 2.

When the examination is ordered.

A public examination can be ordered only when, (i) the company is being wound up by the Court, (ii) the official liquidator has applied to the Court, (iii) the application alleges fraud or the facts stated in it show clearly that in the opinion of the official liquidator there has been fraud on the part of the persons to be examined 2. The official liquidator must make the application whenever he arrives at a judicial conclusion that such facts are in proof that it becomes his duty to make the application 3.

Application and its contents.

The application should set out such facts as the basis of his opinion as will warrant the Court to order the examination 4. Fraud on strangers will not however be taken into account 5. The power to direct a public examination of the persons does not apply to any one of those persons against whom a *prima facie* case of fraud has not been disclosed by the report of the official receiver 6. The Court before it passes an order for public examination must be satisfied that some facts are given in the application which entitle the Court to find that there is a *prima facie* case of fraud against the particular persons named. The wording of the section does not justify the Court on a general allegation of fraud in the management of the company, in making an order for public examination of "any person" not directly implicated in the application. But there is no necessity to specify the charge of fraud with the same particularity as would be necessary

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1. Seth Haribans v. National Sugar Mills [1931] L. 8, 130 I. C. 407.
2. General Phosphate Corpn. [1895] 1 Ch. 3; *ex parte* Barnes [1896] A. C. 146.
3. *Ex. p.* Barnes (supra) at p. 150.
4. Civil, Naval and Military Outfitters [1899] 1 Ch. 215.
5. Medical Battery Co. [1894] 1 Ch. 444.
6. Exp. Barnes [1896] A. C. 146.

in a criminal charge. What should be the contents of an application under this section depends on the facts of the particular case 1. In the last cited case it has been held that the English decisions on the point of an investigation by a liquidator into the conduct of the officers of the company before liquidation are not binding upon Indian Courts, on the ground that the language of this section differs from the language of the corresponding section (s. 175) of the English Act of 1908. But is the difference substantial ?

Order may be made ex parte.

The official liquidator may apply *ex parte* for an order for public examination 2. The person against whom the order is made can move to have the order discharged 1, provided that he applies within a reasonable time 3.

Costs.

The Court cannot order the official liquidator personally to pay costs, as he is merely discharging a statutory duty 4. The official liquidator will only be ordered to pay costs out of the company in the event of exculpation of the person accused 5.

Inspection of notes.

It is only a creditor or contributory or some party to the proceedings which are pending who would be entitled to inspect the notes of examination under this section 6. An order refusing inspection and copies of statements is appealable under S. 202 6.

S. 132, Evidence Act.

This section was not intended to override the provisions of the Evidence Act, and the intention of the legislature in using the words "in civil proceedings" in sub-s. 7 was to make the statement admissible in civil proceedings and subject to s. 132 of the Evidence Act in criminal proceedings. In an examination under this section there being no contest between two parties the proviso to s. 132 of the Evidence Act does not confer special privileges on the persons so examined 7.

Application in voluntary liquidation.

Under s. 215 (now s. 216) a voluntary liquidator is entitled to ask the Court for an order for the examination of persons who are connected with the company with regard to its formation or management and the Court has power to make such an order 8. But where the provisions of s. 203 are not strictly complied with, the company is not in voluntary liquidation and the Court has no power to order the directors to be examined under this section 9.

The pendency of an action by the liquidating company against an examinee or a third party may be a ground for postponing the examination 10.

Appeal.

An order directing that a person should be examined under this section is not a judgment within cl. 15 of the Letters Patent, hence no appeal lies against the order 11.

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1. Indian State Bank [1933] A. 366, [1933] A. L. J. 229.
2. Great Kruger Co. [1892] 3 Ch. 307.
3. National Stores [1899] 2 Ch. 773, affirmed [1900] 1 Ch. 27.
4. John Tweddle & Co. [1910] 2 K. B. 697 ; but see Arthur Willams & Co. [1913] 2 K. B. 88.
5. John Tweddle & Co (supra).
6. De Souza v. Billimoria [1926] L. 246, 26 P. L. R. 432.
7. Ramchand v. King-Emperor [1926] L. 385, 27 Cr. L. J. 1382, 98 I. C. 599.
8. Nowroji Laxman [1920] 22 Bom. L. R. 219.
9. J. C. De v. K. B. Roy Choudhury [1934] R. 271, 151 I. C. 987.
10. *Ex p.* Archer [1901] 85 L.T. 698; North Australian Territory [1890] 45 Ch. D. 87.
11. K. B. Roy Choudhury v. Burma Loan Bank [1936] R. 166, 161 I. C. 749 ; see also Dayabhai v. Murugappa [1935] R. 267, 8 Rang. 135 F.B., 157 I. C. 1007 F. B.

Power to arrest absconding contributory.

197. The Court, at any time either before or after making a winding up order on proof of probable cause for believing that a contributory is about to quit British India or otherwise to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the Court may order.

Under this section the Court may order the contributory to be arrested and his property to be seized, or it may order the one without the other 1. Upon evidence that a contributory is about to sell his goods and chattels for the purpose of evading payment of a call, the Court may make an order for the seizure of the goods, but may decline to order his arrest upon a mere hearsay statement of his intention to leave the country 2.

Saving of other proceedings.

198. Any powers by this Act conferred on the Court shall be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Enforcement of and Appeal from Orders.

Power to enforce orders.

199. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

Application of Civ. Pro. Code.

An order for payment under s. 186 must be regarded as a decree and enforced as such. This means that the provisions of the Code of Civil Procedure relating to execution of decrees are applicable to the execution of such orders 3. Where such an order is sought to be enforced through a Court other than the one which passed it, s. 201 of the Act removes the necessity for complying with the procedure laid down in s. 39 and Or. XXI, rr. 4 and 5, C. P. C. and dispenses with the requirements of rule 6 of that Order and empowers the Court to act on a certified copy of the order alone 4. An assignee or transferee of the order however cannot make an application for enforcement of the order without recourse to the procedure laid down by O. XXI, r. 16, C. P. C. which requires that an application by a transferee of a decree for execution after substitution of his name can be entertained only by the Court which passed the decree 3.

Limitation.

Under this section all orders made by a liquidation Court may be enforced in the same manner in which decrees of such Courts made in any suit pending therein may be enforced. Consequently a call order passed by a liquidation

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1. Imperial Mercantile Credit Co. (infra).
2. Imperial Mercantile Credit Co. [1868] 5 Eq. 264.
3. Tharya Ram v. Popat Ram [1918] 47 I. C. 997.
4. Modern Chemical Works v. Manmohan (infra).

Court in Baroda is not a foreign judgment and a suit on it in British India therefore is governed by Art. 120 and not by Art. 117 of the Limitation Act [1].

See notes to s. 186.

Order made in any Court to be enforced by other Courts.

200. Any order made by a Court for or in the course of the winding up of a company shall be enforced in any place in British India other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

This section applies to a case where an order made by the High Court of one province is to be enforced in another province; it can only be enforced by the High Court of that other province [2].

Procedure.

A decree of one High Court in liquidation proceedings cannot be sent direct for execution to a District Court under another High Court. SS. 199 and 200 must be read so as to be consistent with each other [3].

Effect of ss. 199 & 200.

The conjoint effect of s. 199 and this section is that the order that is filed should be treated in the same manner as a decree passed by the High Court in which it is filed and transferred for execution to the respective District Courts concerned, and it is not competent for the High Court to authorize the official liquidator to apply to the District Court concerned for enforcing under s. 164 an order, *e. g.*, for payment [4], under s. 187 [5].

Mode of dealing with orders to be enforced by other Courts.

201. Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made; and thereupon the last-mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

Transfer of decree.

Where an order made by one Court is sought to be enforced through another Court, this section removes the necessity for complying with the procedure laid down in s. 39 and Or. XXI, rr. 4 and 5, C. P. C. [6]. See notes to s. 199.

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[1] Modern Chemical Works v. Manmohan [1935] L. 975, 160 I. C. 346.

[2] Nataranjan v. Narasimha (infra).

[3] Kayastha Trading &c. Corpn. v. Jaikaran [1927] P. 182, 6 Pat. 132.

[4] British B. & I. Corpn. [1927] M. 271, 100 I. C. 744 dissenting from National Insce. & Banking Co. [1920] 54 I. C. 384.

[5] Nataranjan v. Narasimha [1930] M. 74, 53 Mad. 147, 57 M. L. J. 723, 124 I. C. 223, following Kayastha Trading Corpn. (supra).

[6] Tharya Ram v. Popat Ram (supra).

An order for winding up was made by the Punjab Chief Court and under s. 164 subsequent proceedings were taken in the Court of the District Judge of Lahore against contributories residing in districts within the jurisdiction of the Allahabad High Court. On an application to the latter Court by the official liquidator to enforce these orders it was held that the High Court had jurisdiction to enforce the orders by proceeding in execution before itself or to authorize the official liquidator to apply to the various District Courts in respect of each of the persons against whom orders for contribution had been passed 1.

Appeals from orders.

202. Re-hearings of and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction.

Provisions of the previous Act.

Compare s. 141 of Act X of 1866 and s. 169 of Act VI of 1882 where the right of appeal was given "subject to this restriction that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made in manner in which notices of appeal are ordinarily given under the Code of Civil Procedure, unless such time is extended by the Court of Appeal."

Where a private offer to the official liquidator to purchase certain machinery belonging to the company which was its sole property was sanctioned by the District Judge under s. 144 (c) of the Act of 1882 (corresponding to s. 179 of the present Act) without notice to the creditors or contributories and without satisfying himself that no better offer would be forthcoming if due publicity was given and on the application by the contributories revoked his order, it was held that whether or not the District Judge had a power of review either under s. 169 of that Act or under his inherent power the High Court could permit the contributories and creditors to file an appeal under s. 169 against the original order granting sanction, and excuse delay in filing the appeal 2.

Previous Act applicable—where.

Those sections have been re-enacted omitting the restriction noted above. But where the liquidation of a company began before the present Act came into force, all the proceedings in the winding up including the course of appeal would be governed by the old law as was provided by s. 284 of the present Act before its amendment by Act II of 1938 (see the old s. 284 printed under the amended s. 284 *post*). In such a case an appeal was barred by time if notice of appeal was not served on the respondent within three weeks according to the provisions of s. 169 of the old Act 3. But if an appeal was presented within the prescribed period, the appellate Court could extend the time for service of notice 4.

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1. National Insurance and Banking Co. [1920] 54 I. C. 384, dissented from in British B. & I. Corpn. (supra).
2. Gordon Das v. Kantheemathenatha (infra).
3. Peoples Bank [1915] 28 I. C. 600; Peoples Industrial Bank v. Harkishen Lal [1918] 16 A.L.J. 70, 43 I.C. 642.
4. Santi Lal v. Indian Exchange Bank [1916] 38 All. 536, 14 A.L.J. 722.

Appeal.

This section is wide enough to cover appeals against any order made in the matter of winding up provided such an order finally decides a dispute between the parties or deprives the appellant of a substantial or important right and is not a mere formal or interlocutory order 1. The last part of this section which lays down that appeal will be had "in the same manner &c." merely regulates the procedure to be followed in the presentation and hearing of such appeals 2. Thus where the High Court holds that an application under s. 235 is maintainable, the order is appealable under the Letters Patent 2. Where the managing agents' objections to their being examined under s. 195 and to the official liquidator conducting the examination through counsel were disallowed, an appeal against the order was competent 1. The wording of this section is wide enough also to include an order under s. 237 directing the official liquidator to prosecute certain persons mentioned in that section for criminal offences 3. See notes under s. 153 *ante.*

Appeals lie against all orders made in the matter of winding up, provided such an order finally decides a dispute between the parties or deprives the appellant of a substantial and important right and is not a mere formal or interlocutory order 4. But the Allahabad High Court held in 1916 that a right of appeal under this section is co-extensive with the right of appeal conferred by the Code of Civil Procedure 5. This case has been considered by the above Full Bench of the Lahore High Court.

Petition for re-hearing.

It was held under s. 169 of Act VI of 1882 that the rehearing of an order made in the winding up could only take place before a Court of Appeal, but an order which had been obtained *ex parte* or which was in truth a nullity might be discharged by the Court which made it 6. S. 169 had no application to petitions for setting aside *ex parte* decrees 6. A Judge has inherent power to recall an order passed, without notice and without hearing parties, to correct any serious injustice done to them 7.

Review.

This section was not intended to refer to a case in which a Judge upon the discovery of fresh matter considered it expedient to pass a fresh order to review an order passed by him 8. Where an objection being filed for the compulsory winding up of a company, the Court ordered that the winding up petition be taken off the file on the company furnishing security to the satisfaction of the registrar and the registrar being satisfied with the security accepted it, it was held that the order could not be reviewed 9.

Who can appeal.

An appeal is a stage in and part of the proceedings in a suit and therefore no person can appeal unless he is a party to the suit. A person who had not complied with the Rules framed by the High Court and had not entered his name in the book kept for the purpose and had not in fact attended

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1. Seth Haribans v. National Sugar Mills [1931] L. 8, 130 I.C. 407; Mulk Raj v. O.L Peoples Bank of N. India [1938] L. 658.
2. Mulk Raj v. O. L. Peoples Bank of N. India (supra).
3. Shewram v. Lobo [1931] S. 120, 132 I.C. 474.
4. Sansar Chand v. Punjab Industrial Bank [1929] L. 707 F.B., 10 Lah. 806; Bahri v. Mandal & Bahri Ltd. [1930] L. 721, 126 I.C. 74; Seth Haribans v. National Sugar Mills [1931] L. 8, 130 I.C. 407; Shewram v. Lobo [1931] S. 120, 132 I. C. 474.
5. Santi Lal v. Indian Exchange Bank [1916] 38 All. 537, 14 A.L.J. 722.
6. Hindusthan Bank v. Mehraj Din [1920] 55 I. C. 820.
7. Gordon Das v. Kantheemathenatha [1926] 97 I. C. 295.
8. Ratta Ram v. Amritsar M. R. Fund [1919] 13 P.L.R.
9. Madan Theatres v. Babulal [1934] C. 603, 38 C. W. N. 433, 151 I. C. 126.

the proceedings, has no *locus standie* to appeal [1]. In the last cited case the application was not even treated as a petition for revision.

An appeal against a winding up order may be taken by a creditor or a contributory who has appeared [2] in the winding up Court or by the company itself. Where after the winding up order the majority of contributories declare themselves at a meeting held for the purpose in favour of appealing against the order in the name of the company, an appeal so instituted in the company's name is competent, but this is all mere form. The appeal in such cases is really that of the contributories who are behind it and they may truly be regarded as the appellants [3].

If the company is the only appellant, security for costs of the appeal must be given [4], not out of the company's funds, but from an outside source, namely, by the directors or shareholders who are at the back of the appeal, and the security must be substantial [5]. Application for security must, except under special circumstances, be made before the appeal is in the paper for hearing [6]. The directors may appeal in the name of the company from the winding up order [4]. With the Court's leave the liquidator may appeal [7], but not an outsider [8]. Unless a person shows that he has got an interest which is adversely affected by the decree of the lower Court, or has an interest in the subject matter which is under litigation, he has no right to appeal [9].

Contributories or creditors who have not appeared below cannot appeal without leave [10]. Other interested persons have no right of appeal, but may be heard as *amicus curie* [11]. As to the costs of various parties see the case noted below [12].

Winding up appeals should be expedited; see the caustic remarks of their Lordships in the case of note [3].

Parties to appeal.

The official liquidator is not a necessary party to an appeal against a compulsory winding up order. He cannot be said to be "interested" in the result of the appeal, because after the compulsory winding up order the property of the company does not vest in him, but remains vested in the company. It is however desirable that, as a general rule, he should be made a party to such appeal in order to prevent possible collusion amongst interested parties and to ensure that all the necessary facts are laid before the Court and that proceedings are conducted according to law [13].

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1. Rustomji v. People's Amritsar Bank [1919] 49 I. C. 381.
2. Silkstone Fall Colliery Co. [1876] 1 Ch. D. 38.
3. Ripon Press & Sugar Mill Co. v. Gopal Chetti [1932] P..C. 1, 36 C. W. N. 54, 54 C. L. J. 439. In this case the appeal was by the company (through special leave) and rightly so, observe their Lordship: "In that respect it is in accord with a well established practice devised to meet the necessity of just such a situation", Ibid at p. 8. The official liquidator was respondent in this case.
4. Diamond Fuel Co. [1879] 13 Ch. D. 400 C. A.; in this case the company appealed by its directors, though a liquidator was appointed.
5. Consolidated S. R. M. Deep [1909] W. N. 66 C. A.
6. Indian K. & S. Mining Co. [1882] 22 Ch. D. 83 C. A.
7. City & County Investment Co. [1879] 13 Ch. D. 475.
8. Matilal Kanji & Co. v. Natvarlal [1932] B. 78, 33 Bom. L. R. 1495.
9. Ibid, following Chandrika v. Indra Bikram [1916] 43 I. A. 179, 38 All. 440 P. C.
10. Securities Insurance Co. [1894] 2 Ch. 410 C. A.
11. Bradford Navigation Co. [1870] 5 Ch. App. 600, 9 Eq. 80.
12. Ibo Investment Co. [1903] 2 Ch. 373.
13. Ram Rakha Mal & Sons v. Surindar Singh [1941] L. 134, 43 P. L. R. 33, approving Moti Ram v. Kewal Ram [1928] L. 202, 28 P.L.R. 468, 105 I. C. 569.

Effect of appeal.

An appeal does not stay the proceedings except so far as the Judge of the Court of Appeal orders. Where a winding up order is discharged on appeal, all proceedings taken under it are also discharged 1.

From which orders an appeal lies.

An appeal lies from an order refusing to wind up a company 2, or from an order made for examination of directors, or where the order impugned is vexatious or oppressive so far as the appellant is concerned, and where it is not necessary or beneficial for the purposes of the winding up 3.

An order directing a preferential payment to be made to a creditor is one which relates to and is an incident of the winding up, and the right of appeal is an incident of the winding up 4. But the appointment of any person as an official liquidator is so entirely a matter for the discretion of the Judge dealing with the winding up, that an appellate Court will not review his decision except under very special circumstances or unless it can be shown that the Judge had acted on a wrong principle 5.

This section applies only to orders made in the matter of winding up and has no application to an order fixing the remuneration of an employee of liquidator ; such an order therefore is not appealable 6.

An order passed in a proceeding under s. 200 is an order made in the winding up 7. But an order passed under cl. (6) of s. 247 refusing to restore a company to the register is not an order made in the matter of winding up and hence it is not appealable. Where the order is based on an erroneous view of the law it is however open to revision 8. There was also no appeal under this section from an order made on an application under s. 153 by a company which was not in the course of being wound up 9. But now right of appeal has been given by the new sub-s. (7) of s. 153. An order refusing inspection and copies of statement under s. 196 is appealable 10.

An order depriving a creditor, who has a claim which he long ago put in the form of a proof of debt against a company and which the liquidators are willing to admit, is an order which deprives him of a substantial and important right and it cannot be held that such an order is not appealable by reason that it is not a judgment under cl. 15 of the Letters Patent 11.

An appeal is competent from an order passed in winding up proceedings under supervision of Court 12.

An order of the District Judge as liquidation Judge dismissing certain objections to the attachment of property is not appealable under this section, as the order is under O. 21, R. 56, C. P. C. 13.

"If the order is passed by a District Court", says the judgment of a recent full Court of the Lahore High Court, "the appeal would lie to the High Court and the period of

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1. National P. B. S. Society [1870] 5 Ch. App. 309.
2. Tulsidas v. Bharat Khand Cotton Mills [1914] 39 Bom. 47, 16 Bom. L. R. 692.
3. Harkishen Lal v. Saraswati [1915] 28 I. C. 286.
4. People's Industrial Bank v. Harkishen Lal [1918] 18 A. L. J. 70.
5. M. A. J. Noble v. Bank of Burma [1912] 17 I. C. 853.
6. Ghanshyamdas v. Hindustan Bank [1920] 55 I. C. 928.
7. G. I. Bower v. Imperial Bank Ltd. [1913] 35 All. 177.
8. Surjan Das v. Chabba Cotton Co. [1925] L. 443, 26 P. L. R. 68, 86 I. C. 652.
9. Viramgam &c. Co. v. Industrial Bank [1925] 27 Bom. L. R. 655 ; see Dawson v. Hormusji [1932] R. 154, 10 Rang. 189.
10. De Souza v. S. S. Billmoria [1926] L. 246, 26 P. L. R. 432.
11. Levy Bros. v. Subodh [1927] C. 689, 31 C. W. N. 194.
12. Tabha Mal v. Jagraon Trading Syndicate [1935] L. 174, 158 I. C. 853.
13. Santilal v. Indian Exchange Bank [1916] 38 All. 537 ; Charan Das v. Amritsar National Bank [1927] L. 282, 28 P. L. R. 209, 101 I. C. 751.

limitation would be 90 days from the date of the order as prescribed by Art. 156, Limitation Act; if however the winding up is proceeding before a Single Bench of the High Court in the exercise of its original jurisdiction, the forum of appeal would be a Bench of two or more Judges of the High Court under cl. 10, Letters Patent, and the limitation for such appeals is 20 days as laid down in Art. 151, Limitation Act. But if the matter is being dealt with by a Bench of two or more Judges of the High Court, no appeal would lie from the order of such a Bench to any Court in India, but the aggrieved party may appeal to His Majesty in Council in the manner and subject to the conditions laid down in s. 109, Civil Procedure Code or cl. 29, Letters Patent, and in such a case the application for leave to appeal must be made within 90 days of the order (Art. 179)" 1.

Limitation.

Appeals from orders passed by the High Court in exercise of its original jurisdiction being governed by Art. 151, Limitation Act, which is under s. 3 of that Act subject to s. 12 of the same Act, the appellant is entitled, as of right, to deduct the time requisite for obtaining copies. Consequently s. 12 Limitation Act governs an appeal preferred under the present section from an order of a single Judge of the High Court exercising original jurisdiction where the forum of appeal (as distinct from the right of appeal) is provided by the Letters Patent, and therefore the appellant is entitled to exclude the "time requisite" for obtaining a copy of the judgment appealed against, even though under the rules and orders of the High Court no copy of the judgment is required to be filed with the memorandum of appeal 2.

Deduction of time for copies.

The Court under the Act being a Court of civil jurisdiction is governed by the general provisions of the Code of Civil Procedure as made applicable by s. 141 of the Code and should in dealing with *ex parte* orders proceed under O. 9, r. 13 *mutatis mutandis* 3.

C. P. C. applies.

Where an application is made to discharge an order made in chambers, the analogy of this section will be followed 4.

Voluntary winding up.

203. A company may be wound up voluntarily—

Circumstances in which company may be wound up voluntarily.

(1) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(2) if the company resolves by special resolution that the company be wound up voluntarily;

(3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its

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1. Punjab Co-operative Bank v. O. L. Punjab Cotton Press Co. [1941] L. 257 (259), [1941] Lah. 191, 43 P. L. R. 297.
2. *Ibid*, (overruling Jog Dhian v. Hussain [1935] L. 328 F.B., 16 Lah. 448 and following Surty v. Chettyar [1928] P. C. 103, 55 I. A. 161, 6 Rang. 302 P. C.
3. Hindustan Bank v. Mehraj Din (supra).
4. See National Stores [1899] 2 Ch. 773, 776.

liabilities continue its business, and that it is advisable to wind up

and *the expression "resolution for voluntarily winding up" when used hereafter in this Part means a resolution passed under clause* (1), *clause* (2) *or clause* (3) *of this section.*

By the Companies (Amendment) Act, 1936, at the end of clause (3) the words in italics have been inserted.

Meaning of "company." The word "company" does not include an unregistered company[1], but includes a company formed and registered under the Indian Act of 1866 or any Act or Acts repealed thereby or under the Act of 1882[2].

Creditors' right. Creditors had no voice, before the amending Act of 1936, as to whether a company should be wound up voluntarily; but they might, under an order of the Court, obtain a certain amount of control over the proceedings, Now see ss. 209 to 209H.

Cl. (2). A company by passing a special resolution can wind up itself under this clause or under cl. (1) of s. 162[3].

Members' power. The members' power to wind up voluntarily cannot be excluded by any provision in the articles except to the extent of precluding certain shareholders or classes of them from the right of voting[4].

Resolution when invalid. The resolution to wind up will not be valid if it is passed at a meeting which was not properly convened[5], or at a meeting at which a quorum was not present[6], or if the resolution passed at the meeting was not in accordance with the resolution of which notice had been given[7]. But a resolution to wind up will not be rendered invalid by the fact that it was passed contemporaneously and in concert with an invalid resolution for reconstruction[8].

Notice. The notice must show clearly that it was intended to propose a resolution that the company was unable, by reason of its liabilities, to continue its business[9]. A notice stating that a resolution in the terms of this section will be proposed may however be sufficient[10].

Where a notice was given calling an extraordinary general meeting and, if necessary, to pass a special resolution that the company be voluntarily wound up and that liquidators be appointed, and then it went on to say that in the event of the said resolution being passed a special meeting would be held immediately after the extraordinary general meeting confirming the same, and a resolution was passed for winding up the company and liquidators were appointed; it was held that the resolution not being a special resolution as defined in the Act, the voluntary winding up was not according to

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1. S. 271 (1) (ii).
2. S. 2, sub-s. (1) cls. (2) and (7)
3. Oriental Navigation Co. v. Bhanaram [1922] 49 Cal. 399, 69 I. C. 241.
4. Payne v. Cork Co. [1900] 1 Ch. 308.
5. Haycraft Gold Reduction Co. [1900] 2 Ch. 230; State of Wyoming Syndicate [1901] 2 Ch. 431.
6. Cambrian Peat Co. [1874] 31 L.T. 773.
7. Teede & Bishop Ltd. [1901] 70 L.J. Ch. 409, 84 L.T. 561.
8. Thompson v. Henderson's Transvaal Estates [1908] 1 Ch. 765.
9. Bridport Old Brewery Co. [1867] 2 Ch. App. 191; see also Patent Floor Cloth Co. [1869] 8 Eq. 664, and Tiessen v. Henderson [1899] 1 Ch. 861; Silkstone Fall Colliery Co. [1875] 1 Ch. D. 38.
10. Stone v. City & County Bank [1877] 3 C.P.D. 282.

law and the appointment of liquidators was a nullity and they had no *locus standie* to exercise the statutory power of a properly appointed liquidator 1.

What is a fatal defect in an extraordinary resolution.

If an irregularity in passing an extraordinary resolution directing a voluntary winding up is discovered after the supervision order under s. 221, the order may be discharged on application to the Court of Appeal and the time for making the appeal, if necessary, may be extended 2. The omission to state in the resolution that the company cannot, by reason of its liabilities, continue its business and that it is advisable to wind it up is a fatal defect 2. Where the company has not passed an extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business and that it is advisable to wind it up as required by s. 203 (3), and the notice calling the general meeting at which the question of liquidation was discussed did not specify the intention to propose the resolution as an extraordinary resolution, the company is not in voluntary liquidation in accordance with the provisions of the Act 3.

Waiver of formalities.

It is however competent for all shareholders acting together to waive the formalities required by s. 81 as to notice of intention to propose a resolution as an extraordinay resolution, and all the shareholders meeting and passing a resolution to wind up the company, the resolution is an extraordinary resolution within the meaning of this section, and it is not open to a creditor to impeach its validity 4.

Contempt of Court.

It is a contempt of Court, while a petition for compulsory winding up is pending, to obtain by improper means a resolution for a voluntary winding up with a view to mislead the Court as to the real views of the shareholders and thereby induce the Court to abstain from making a compulsory order 5.

When compulsory order may be made.

An order to wind up a company compulsorily will be made on the petition of a paid up shareholder, notwithstanding that an extraordinary resolution has been passed to wind it up voluntarily 6.

Effect of resolution.

Passing a resolution for voluntary liquidation does not operate as a notice of discharge of the servants of the company where the business is continued 7. Where a company goes into voluntary liquidation merely with a view to reconstruct itself, the property of the old company being transferred to the new company, it does not cease to carry on business within the meaning of an agreement which provides that in the event of the company ceasing to carry on business the Municipality should have the right of purchasing the company's telephone lines with plants, stores &c. 8.

Gratuities.

A company should not, after the commencement of the voluntary winding up, give gratuities to directors or servants and if they are voted, the liquidator should refuse to pay them 9.

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1. Indian Trading & Engineering Co. [1911] 15 C.W.N. 1047. But see the new sub-s. (2) of s. 81. 2. Ram Prasad v. Union Bank of India [1917] 38 I.C. 943.
3. J. C. De v. K. B. Roy Choudhury [1934] R. 271, 7 Rang. 132.
4. Oxted Motor Co. [1921] 3 K. B. 32.
5. Septimus Parsonage & Co. [1901] 2 Ch. 424.
6. Haycraft Gold Reduction Co. [1900] 2 Ch. 230.
7. Midland C. D. Bank v. Attwood [1905] 1 Ch. 357 ; but see Reigate v. Union Manufacturing Co. [1918] 1 K. B. 592.
8. Bombay Telephone Co. v. Karachi Municipality [1928] S. 137, 109 I.C. 13.
9. Hutton v. West Cork Ry. [1883] 23 Ch. D. 654 ; Stroud v. Royal Aquarium [1903] 89 L. T. 243.

Commencement of voluntary winding up.

204. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution *for voluntarily winding up.*

By the Companies (Amendment) Act, 1936, the words in italics have been substituted for the words "authorising the winding up."

Importance of the date.

The date of commencement of a winding up is important, as past members may escape by reason of a year having elapsed since they ceased to be members 1, or fraudulent preference may have become unimpeachable 2.

A special resolution was deemed to have been passed at the date when is was confirmed 3. But confirmation is no longer necessary ; see s. 81 (2) *ante.*

When followed by other winding up.

Where a voluntary winding up was continued under supervision 4, or was followed by a compulsory winding up 5, the winding up commenced at the date of the confirmation of the special resolution authorizing the voluntary winding up 6, and it made no difference that the order was made on a petition presented before the resolution was passed where nothing had been done until after the resolution 7.

Effect of voluntary winding up on status of company.

205. When a company is wound up voluntarily, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof :

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

From the commencement of winding up a company's existence continues solely for the purpose of the winding up, and not for another purpose such as an amalgamation 8, or a reconstruction 9. With the sanction under s. 208A (2) or s. 209D (2) the directors' powers may be exercised 10. As to compulsory winding up see s. 179 and notes.

When a limited company, against which an action is brought, subsequently goes into voluntary liquidation, it still remains as defendant on the record. The liquidators are not parties to the suit and it is improper to implead them as parties defendants. The effect of the liquidation on the suit is merely that in the conduct of the defence, the company would, before liquidation, act through the directors, and after liquidation through the liquidators 11.

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1. Taurine Co. [1883] 25 Ch. D. 118 ; see also West Cumberland Iron and Steel Co. [1889] 40 Ch. D. 361.
2. Russel Hunting Record Co. [1910] 2 Ch. 78.
3. Weston's case [1869] 4 Ch. App. 20 ; Daw's case [1868] 6 Eq 232.
4. S. 221.
5. Indian Bank, Ltd. [1934] A. 114, [1934] A.L.J. 476.
6. Weston's case (supra) ; West Cumberland Iron & Steel Co. (supra).
7. Hodgkinson v. Kelly [1868] 6 Eq. 496 ; West Cumberland Iron & Steel Co. (supra).
8. London B. & M. Bank, Daw's case [1867] 36 L. J. Ch. 785.
9. Wreck Recovery Co. [1880] 15 Ch. D. 353.
10. Ladd's case [1893] 3 Ch. 450.
11. Dawsons Bank v. Nippon Menkwa [1935] P. C. 79, 13 Rang. 256, 62 I. A. 100, 39 C. W. N. 657.

A resolution to wind up does not operate as a dismissal of the company's servants [1].

Compare s. 179, cl. (b) and see notes thereto.

Notice of resolution to wind up voluntarily.

206. (1) Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the [*Official Gazette*], and also in some newspaper (if any) circulating in the district where the registered office of the company is situate.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.

In sub-s. (1) the words in italics within square brackets have been substituted for "local official Gazette" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Declaration of solvency.

207. (1) *Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, * make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding three years, from the commencement of the winding up.*

(2) Such declaration shall be supported by a report of the company's auditors on the company's affairs, and shall have no effect for the purposes of this Act unless it is delivered to the registrar for registration before the date mentioned in sub-section (1) of the section.

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as a "members' voluntary winding up", and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up."

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[1] Midland C. D. Bank v. Attwood [1905] 1 Ch. 357; but see Reigate v. Union Manufacturing Co. [1918] 1 K. B. 592.

Amendment. By sec. 105 of the Indian Companies (Amendment) Act, 1936, the new ss. 207 to 218 (both included) have been substituted for ss. 207 to 219, both included, of the Act of 1913. As a result there is no s. 219 in this amended Act. The wordings of some of the original sections reappear in the new sections; so relevant case notes have been given at the appropriate places under the new sections.

By the Repealing and Amending Act XXXIV of 1939 the word "to" between "sent out" and "make a declaration" in sub-s. (1) has been omitted.

The above s. 207 is new and reproduces s. 230 of the English Act of 1929. The original ss. 207 to 219 are given below :—

Consequences of voluntary winding up. **207.** The following consequences shall ensue on the voluntary winding up of a company :—

(i) the assets of the company shall be applied in satisfaction of its liabilities *pari passu* and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company ;

(ii) the company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them ;

(iii) on the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof ;

(iv) the liquidator may, without the sanction of the Court, exercise all powers by this Act given to the official liquidator in a winding up by the Court ;

(v) the liquidator may exercise the powers of the Court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves ;

(vi) the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories ;

(vii) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined by the company at the time of their appointment, or in default of such determination by any number not less than two ;

(viii) if from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator ; and

(ix) the Court may, on cause shown, remove a liquidator, and appoint another liquidator.

Notice by liquidator of his appointment. **208.** (1) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the registrar a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

209. (1) Every liquidator appointed by a company in a voluntary winding up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than twenty-one days nor more than one month after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the local official Gazette and once at least in some newspaper (if any) circulating in the district where the registered office or principal place of business of the company was situate.

Rights of creditor in a voluntary winding up.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the Court for the appointment of any person as liquidator in the place of, or jointly with, the liquidator appointed by the company, and, if the creditors so resolve, an application may be made accordingly to the Court at any time not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting :

Provided that the Court may, by order at any time, extend the time for making an application under this sub-section for such period as the Court thinks proper.

(3) On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.

(4) The Court shall make such order as to the costs of the application as it may think fit, and, if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherewise disposed of adversely to the applicant.

210. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

Power to fill vacancy in office of liquidator.

(2) For that purpose a general meeting may be called by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

211. (1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement

Delegation of authority to appoint liquidators.

with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

Arrangement when binding on creditors.

212. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Power for liquidators to accept shares, etc., as a consideration for sale of property of company.

213. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company) the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereinafter provided.

(4) If the liquidator elects to purchase the member's interest, the purchase-money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

214. (1) The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration.

Mode of determining price.

(2) The provisions of the Indian Arbitration Act, 1899, other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

215. (1) Where a company is being wound up voluntarily, the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up, or to exercise as respects the enforcing of calls, or any other matters, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

Power to apply to Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just.

216. (1) Where a company is being wound up voluntarily, the liquidator may, from time to time, summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.

Power of liquidator to call general meeting.

(2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting a statement in the prescribed form containing the prescribed particulars with respect to the proceedings in and the position of the liquidation.

217. (1) In the case of every voluntary winding up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

Final meeting and dissolution.

(2) The meeting shall be called by advertisement, specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in section 206.

(3) Within one week after the meeting, the liquidator shall file with the registrar a return of the holding of the meeting, and of its date, and in default of so doing, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(4) The registrar on the filing of the return shall forthwith register it, and, on the expiration of three months from the registration of the return, the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under sub-section (4) is made, within twenty-one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Costs of voluntary liquidation.

218. All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims at the date of the winding up.

Saving for rights of creditors and contributories.

219. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, if the Court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

Members' voluntary winding up.

Provisions applicable to a member's voluntary winding up.

208. *The provisions contained in sections 208A to 208E, both inclusive, shall apply in relation to a member's voluntary winding up.*

This section reproduces s. 231 of the English Act of 1929.

Power of company to appoint and fix remuneration of liquidators.

208A. (1) *The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.*

(2) *On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.*

This section redroduces s. 232 of the English Act of 1929 and sub-s. (1) is the same as cl. (ii), and sub-s. 2 is the same as cl. (iii) of the original s. 207 of the Indian Act of 1913.

How liquidator is to be appointed.

Sub-s. (1). The liquidator may be appointed by an ordinary resolution, but he must not be appointed until there is an effective resolution to wind up the company[1]. If the liquidator is to be appointed by an ordinary resolution, notice of the intention to appoint him need not be given[2]. If the resolution to wind up was special, the appointment of the liquidator could not be made until after the confirmation; but it might be made by a resolution passed before and confirmed after the confirmation of the winding up resolution[1]. As the appoint-

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1. Indian Zoedone & Co. [1884] 26 Ch. D. 70 C. A.
2. Welsh Flannel Co. [1875] 20 Eq. 360; Oakes v. Turquand [1867] L. R. 2 H.L. 325.

ment of a liquidator was not required to be made by a special resolution, if any liquidator was proposed in the special resolution, it might be changed at the confirmatory meeting[1]. But a confirmatory meeting is no longer required ; see the new sub-s. (2) of s. 81.

A liquidator might be appointed at the general meeting at which a special resolution was confirmed or an extraordinary resolution wss passed, without any special notice being given that a resolution to appoint a liquidator would be proposed[2]. If notice is given that a certain person will be proposed at the meeting for the office of the liquidator, and the motion for that purpose fails, the meeting may appoint another person[3].

Effect of appointment of liquidator. The appointment of a liquidator, whether in a voluntary or a compulsory winding up, determines the authority of agents appointed by the directors from the time when notice of the winding up or the appointment of a provisional liquidator reaches them[4].

Imperfect appointment. Where a person is appointed liquidator, however imperfect he may consider his appointment to be, if he is nominally a liquidator and acts as such, he must carry out the duties as well as exercise the rights of a liquidator[5].

Remuneration of liquidator. Where the Court fixes the remuneration of a liquidator, it is generally on a percentage basis[6]. When a supposed voluntary liquidation proves to have been irregularly commenced, the liquidator has no claim for his services ; but so far as they have been adopted by the compulsory liquidator, the former may be paid upon a *quantum meruit*[7].

Where a members' voluntary winding up is superseded by compulsory liquidation, the Court is empowered by rule 192, sub-rule 1 of the English Companies (Winding up) Rules, 1929 to review the amount of remuneration fixed by the members of the company during the voluntary liquidation, as payable to the voluntary liquidator[8]. See rule 121 of the fresh Rules made by the Calcutta High Court (printed in the Appendix) which is not specific on the point.

Omission. If the Company in passing a resolution for voluntary winding up has omitted to appoint any liquidator, the Court may appoint one by the supervision order[9].

Joint liquidators. Where two persons are appointed liquidators jointly, the refusal of one of them to act renders abortive the resolution appointing them. One of them cannot take up the work alone, it clearly being the intention of the shareholders that they should act jointly and not separately[10]. So also where there are two liquidators and one of them dies, the survivor cannot act until a new liquidator is appointed[11].

Liquidator not trustee. A voluntary liquidator has been held in England to be not a trustee within the meaning of the English Trustees Act, 1925[12].

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1. Parshuram v. Tata Industrial Bank [1924] 26 Bom. L. R. 987, 90 I. C. 189.
2. Welsh Flannel Co. (supra) ; Oakes v. Turquand (supra).
3. Trench Tubeless Tyre Co. [1901] 1 Ch. 408 C. A.
4. Oriental Bank Corpn. ex. p. Guillemin [1885] 28 Ch. D. 634 at p. 640.
5. Satish Ch. Ghose v. Emp. [1917] 39 All. 412, 15 A. L. J. 346.
6. Carton Ltd. [1923] 128 L. T. 629, 39 T. L. R. 194.
7. Allison, Johnson & Foster [1904] 2 K. B. 327.
8. Mortimers (London) Ltd. [1937] 1 Ch. 289.
9. London Quays & Warehouses Co. [1868] 3 Ch. App. 394.
10. Allahabad Union Bank [1928] A. 165, 26 A. L. J. 131, 109 I. C. 22.
11. Metropolitan Bank [1876] 2 Ch. D. 366.
12. Windsor Steam Coal Co. [1928] 1 Ch. 609.

Sanction for continuance of directors' powers.

Sub-s. (2). The liquidator has power to sanction the continuance of the powers of the directors which cease on his appointment. Before his appointment such sanction may be given by a general meeting of the company 1. Inspite of this section the directors, it seems, do not cease to be officers to the company 2.

Power to fill vacancy in office of liquidator.

208B. (1) *If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.*

(2) *For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.*

(3) *The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.*

This section reproduces s. 233 of the English Act of 1929, and its language is almost identical with that of the original s. 210 which may be compared.

Power of liquidator to accept shares, etc., as consideration for sale of property of company.

208C. (1) *Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company"), the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.*

(2) *Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.*

(3) *If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of*

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1. Ladd's case [1893] 3 Ch. 450.
2. Madrid Bank v. Bayley [1867] L. R. 2 Q. B. 37; Shaws Bryant & Co. [1901] W. N. 124, 45 S. J. 580.

the company within seven days after the passing of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereafter provided.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

(6) The provisions of the···"Arbitration Act, 1940" other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitraiions in pursuance of this section.

Amendment.

In sub-s. (6) for the words and figures "Indian Arbitration Act, 1899" the words and figures "Arbitration Act, 1940" have been substituted by the Repealing and Amending Act, XXXII of 1940.

This section reproduces s. 234 of the English Act of 1929, and it is the same as the original s. 213 of the Indian Act of 1913 save only this that sub-s. (6) is new.

Memorandum and articles cannot take the place of this section.

Formerly it was considered that if the memorandum of association contained powers for the company to sell its business to another company in cosideration of shares and to distribute the shares in specie 1, this would enable the company to avoid compliance with this section 2. But in 1908 the Court of Appeal in England held that the proper function of the memorandum was to deal with the objects of the company during its corporate life, and not after the life had come to an end 3, and that any clause which could be used to maintain a scheme which imposed upon the members the alternative of accepting liability for a larger sum or being dispossessed of his status as a shareholder upon terms which he was not bound to accept was *ultra vires* 3. A company limited by shares cannot by its memorandum and articles of association provide as part of its constitution that in an event the corporator shall either submit to a liability on his shares or shall be dispossessed of his status as a corporator 4.

Every limited company has under this section a statutory right of effecting an

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1. Mason v. Motor Traction Co. [1905] 1 Ch. 419.
2. Cotton v. Imperial & F.A. Corporation [1892] 3 Ch. 454; Wall v. London N.A. Corporation [1898] 2 Ch. 469; Booth v. New Afrikander Gold Mining Co. [1903] 1 Ch. 295.
3. Bisgood v. Henderson's Transvaal Estates [1908] 1 Ch. 743, followed in Etheridge v. Central Uruguay Railway Co. [1913] 1 Ch. 425.
4. Bisgood v. Henderson's Transvaal Estates (supra).

Statutory right.

arrangement whereby it is amalgamated with another company. No express power need be contained in the memorandum of association[1]; for the scheme of amalgamation does not depend for its validity upon the constitution of the company as contained in the memorandum and articles[1]. But the issue whether the amalgamation is binding upon the transferee company depends not upon the section, but upon the question whether that company is by its constitution empowered to effect such an acquisition[1].

Where the section is not called into operation.

In case where this section is not called into operation the right of every member is to have the assets, including the shares in the purchasing company, realized and applied first in payment of the debts and then to have his proportionate share of the balance[2]. So although a company can sell its undertaking under powers in the memorandum when it is intended to retain the proceeds of the sale in the business of the company, yet if the company is proposed to be wound up and the transaction is a sale and distribution, then the sale by conversion into money may be replaced by exchange for shares upon the terms, but only upon the terms of complying with the provisions of this section[3] in which case the right of a member to dissent cannot be excluded[3].

As to the rights of the shareholders to set aside the transaction after it has been completed, see *Clinch* v. *Financial Corpn.*[4].

Sub-s. (1). To comply with sub-s. (1) there must at least be a special resolution authorizing the liquidator to accept shares as consideration for the sale. In the absence of such a special resolution there would be no special resolution to which the provisions relating to dissentients in sub-s. (3) could apply[5].

Purchasing company must be in existence.

A sale under this section can be made only to a company already in existence[6] and not to a person about to form a company, or to a trustee for an intended company. But the purchasing company need not be one incorporated under this Act[7]. The new company however must have power under its memorandum to accept the transfer[8]. Reconstruction of an existing company by winding up and sale of its entire undertaking and assets for shares in a new foreign company is however outside the scope of reconstruction under this section[9]. But it may be effected as an arrangement under s. 153[10]. Under this section a company cannot sell or transfer its business or property in a foreign company[11].

Shareholders & creditors are bound by the sale.

The sale binds both the shareholders and the creditors of the transferor company[12] though the mortgagees may be entitled under the terms of their mortgage to prevent a sale of its assets[13]. The remedy of a creditor who cannot get payment of his debt is to obtain a winding up order before the expiration of a year[11].

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1. Parshuram v. Tata Industrial Bank [1925] B. 49, 26 Bom. L. R. 987, affirmed [1928] P.C. 180, 55 I.A. 274.
2. Bisgood v. Henderson's T. Estate, supra.
3. Ibid at p. 762 ; Etheridge v. Central Uruguay Ry. Co. (supra).
4. [1869] 4 Ch. App. 117, 118.
5. Etheridge v. Central Uruguay Ry. Co. (supra).
6. Bird v. Bird's Patent &c. Sewage Co. [1874] 9 Ch. App. 358.
7. Ex *p.* Fox [1871] 6 Ch. App. 176.
8. Pulbrook v. New C. S. Corpn. [1878] 26 W. R. 11.
9. Thomas v. United Butter Co. [1909] 2 Ch. 484.
10. Anglo-Continental Supply Co. [1922] 2 Ch. 723.
11. Thomas v. United Butter Co. [1909] 2 Ch. 484.
12. City and County Investment Co. [1879] 13 Ch. D. 475 C. A.
13. Borax & Co. [1899] 2 Ch. 130.

What provisions of the agreement are valid.

The agreement for sale may validly provide that the transferor company shall call up its unpaid capital and transfer the amount so realized to the transferee company 1 ; but the agreement cannot validly provide for a call to be made on the shares of the transferor company in case its assets do not realize a specified amount 2. It may provide that shares in the transferee company shall be allotted either to the liquidator or directly to the members of the transferor company, and so either partly or fully paid up. The liability to pay cash however cannot be imposed on the members of the transferor company by allotting them shares credited as partly paid up, except with their consent 3. If there are preference shares with no preference as to capital in the transferee company, the preference shareholders are not entitled to preference shares in the transferor company 4. It is not allowable, upon a sale under this section, to distribute the assets otherwise than in accordance with the legal rights of the parties 5.

The agreement for sale is not invalid because it provides that part of the purchase money shall be paid to the directors and secretary of the transferor company as compensation for loss of office 6. The proposed payment however should be fully disclosed to the shareholders 7. Upon reconstruction it is desirable that effective assignment of the old company's property should be taken 8.

Court's power.

The Court has no power to authorize a sale to a transferee company in consideration of its agreeing to pay the creditors of the transferor company by instalments 9, nor even to authorize an agreement or resolution compelling the members of the transferor company to pay a premium upon the shares of the transferee company 10.

Distribution of consideration.

The consideration for the sale must be distributed among the members of the selling company in proportion to their rights and interests 11 under its regulations in the assets of the company remaining after payment of its liabilities. The persons prejudicially affected by any other mode of distribution can only be bound by their individual consent 12.

Court's jurisdiction.

An application was made for sanction of a scheme under which the liabilities of a company were to be paid up in full by a new company which was to take over the assets and liabilities of the old company, and the shareholders in the existing company were to receive shares of the new company as provided by the scheme. Meetings were held and the requisite resolutions of the different classes of shareholders and debenture-holders passed in favour of the scheme. On Nevile, J. sanctioning the scheme, certain shareholders appealed, and it was held that there was no jurisdiction (under s. 153) to compel the ordinary shareholders to take shares in the new company 13. But in a later case Astbury J. held that the last cited case must have

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1. New Zealand G. E. Co. v. Peacock [1894] 1 Q. B. 622 C. A.
2. Clinch v. Financial Corpn. [1868] 4 Ch. App. 117. 3. See note 11, last page.
4. See Griffith v. Paget [1877] 5 Ch. D. 894, 6 Ch. D. 511, 514.
5. Griffith v. Paget (supra) ; Simpson v. Palace Theatre [1893] 9 T. L. R. 470.
6. Southall v. British M. L. A. Society [1871] 6 Ch. App. 614 ; cf. Kaye v. Croydon Tramways Co. [1898] 1 Ch. 358 C. A.
7. Tiessen v. Henderson [1899] 1 Ch. 861 ; cf. Normandy v. Ind, Coope & Co. [1908] 1 Ch. 84 ; Clarkson v. Davies [1923] A.C. 100.
8. Friary &c. Breweries v. Singleton [1899] 1 Ch. 86, 2 Ch. 261.
9. General Exchange Bank [1867] 15 W.R. 477.
10. Imperial Bank of China &c. v. Bank of Hindusthan &c. [1868] L. R. 6 Eq. 91.
11. Griffith v. Paget [1877] 5 Ch. D. 894.
12. Northwest Argentine Railway [1900] 2 Ch. 882.
13. General Motor Cab Co. [1913] 1 Ch. 377.

depended on the special circumstances and he sanctioned a scheme which allowed dissent by dissatisfied members 1. The whole subject was exhaustively discussed by the same Judge in the under-noted case 2 and the following propositions were laid down : (1) When a scheme is really and truly a sale (under s. 213 replaced by the present section) *simpliciter* that section must be complied with and cannot be evaded by calling it a scheme of arrangement (under s. 153) ; (2) where a scheme cannot be carried through under s. 213 though it involves *inter alia* a sale to a company within that section for shares, policies and other interests and for liquidation and distribution of the proceeds, the Court can sanction it (under s. 153), if it is fair and reasonable in accordance with the principles upon which the Court acts in these cases, and it may, but only if it thinks fit, insist as a term of its sanction on the dissentient shareholders being protected in manner similar to that provided for in s. 213 ; (3) where a scheme of arrangement is one outside s. 213 entirely, the Court can also act as in proposition (2).

Sub-s. (3). A member who dissents from the sale is entitled, if he gives the requisite notice, to have his interest purchased by the liquidator, and this is a right which the articles cannot deprive him of 3. Provisions in the articles as to the price at which the interest of a dissentient member is to be purchased do not constitute an agreement within the meaning of sub-s. (3) so as to deprive him of his right to have his interest determined by arbitration 4. If a dissentient member fails to give the necessary notice, he will not be entitled to have his interest purchased, but he will not be bound to take shares in the purchasing company 5. An agreement by which time is fixed within which shareholders must elect whether they will take the shares or not is valid 6.

A member of the transferor company, even if he has not served notice of dissent, cannot be compelled to accept shares in the transferee company, but if he has served no such notice, he is not entitled to receive compensation for his interest in the transferor company 7.

Unless provision is made to satisfy money payable to a dissentient member, an injunction will be granted to restrain the liquidator from parting with the assets without providing for his claim 6. The new company is in no sense the servant or agent of the transferor company, and is not bound by injunctions granted against it 8.

The requisition under sub-s. (3) must be contained in the notice of dissent 9. Where the registered office is abroad, the notice given to the liquidator in England has been held to be sufficient, and that the liquidator can waive service at the office 10. An article which purports to authorize what may be done under the Act, but omits the proviso in favour of dissentient shareholders, is invalid 11. A company by its articles cannot deprive members of the protection afforded to them by this section 11. Nor can this result be produced by the exercise of powers taken in the memorandum of asso-

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1. Sandwell Park Colliery Co. [1914] 1 Ch. 589.
2. Anglo-Continental Supply Co. [1922] 2 Ch. 723.
3. Payne v. Cork Co. [1900] 1 Ch. 308.
4. Baring-Gould v. Sharpington &c. Syndicate [1899] 2 Ch. 80.
5. Higg's case [1865] 2 H. & M. 657.
6. Postlethwaite v. Port Phillip &c. Co. [1889] 43 Ch. D. 452 ; Burdett-Coutts v. True Blue Gold Mine [1899] 2 Ch. 616.
7. Bank of Hindustan &c., *ex p.* Los [1865] 34 L. J. Ch. 609, 12 L. T. 690.
8. Booch v. Simms Manufacturing Co. [1909] 25 T. L. R. 419.
9. Union Bank of Kingston-upon-Hull [1880] 13 Ch. D. 808.
10. Brailey v. Rhodesia Consolidated Ltd. [1910] 129 L.T. 10, [1910] 2 Ch. 95.
11. Payne v. Cork Co. (supra).

ciation ; for, the provisions of this section define rights in the members which cannot by any clause in the memorandum and articles be excluded 1.

Unless a contrary intention appears, a power to sell for shares is not confined to a sale for fully paid up shares 2.

A notice under sub-s. (3) dissenting from a resolution for reconstruction must not only contain a declaration of dissent, but must also expressly give the liquidator the option either to abstain from carrying the resolution into effect or to purchase the dissentient member's interest 3. As to the sufficiency of the notice and the liquidator's power to waive any informality, see the cases noted below 4. The circular convening the meeting must expressly state that the sale is to be carried out under this section 5.

Case of secret agreement.

In the case of a proposed amalgamation where there is any secret agreement or any interest of the directors in the agreement not disclosed in the circular or in the notice of the meeting, the Court will view with strictness any omission to refer to it in the notice or circular accompanying the notice ; and the omission to mention any secret arrangement would constitute a serious defect in the notice. But where no secret agreement is proved or suggested and where there is no indication that there was anything to conceal, that Court will, as far as possible, take a liberal view of the terms of the notice and will not upset the proceedings 6. The notice calling the extraordinary general meeting is not defective, if it failed to disclose difference of opinion among the directors on the question mentioned in the notice, nor if the copy of the agreement of the proposed amalgamation is not sent to the shareholders along with the notice 7.

Amalgamation.

If the word "amalgamation" is used in the proposed extraordinary resolution, in such a case it is not inaccurate, for an amalgamation may take place either by the transfer of the undertaking to a new corporation or by continuance of the old company by the new company upon terms that the shareholders of the former shall become shareholders of the latter, It is not necessary that an altogether new company should be formed 8.

A resolution in which the voluntary winding up of the company is mixed up with other matters relating to the agreement of amalgamation with another company is not illegal 8. The mere fact that in terms there are no words authorizing the liquidators to receive compensation and distribute it among the shareholders does not also make the resolution illegal 8.

Unfair scheme.

Where a scheme is eminently unfair, a dissentient minority may stop it by obtaining a compulsory winding up order 7.

Right of transferee of shares.

When under a contract made prior to the sanction of the reconstruction scheme the purchaser is entitled to be registered as transferee of shares in the old company, and the vendor obtains the allotment of shares in the new company, the allottee is a trustee of them for the purchaser, although he has delayed registration of the transfer 9.

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1. Bisgood v. Henderson's T. Estates [1908] 1 Ch. 743.
2. Consolidated S. R. M. Deep [1909] 1 Ch. 491.
3. Demerara Rubber Co. [1913] 1 Ch. 331.
4. Motiram v. Gordon Mills [1888] 12 Bom. 526 ; Fleming &c. Co. v. Joosulp [1883] 7 Bom. 494 ; Brailey v. Rhodesia Consolidated Ltd. (supra).
5. Imperial Bank of China &c. v. Bank of Hindustan &c. (supra).
6. Parshuram v. Tata Industrial Bank [1924] 26 Bom. L. R. 987, 90 I. C. 189, [1925] B. 49.
7. Consolidated S. R. M. Deep (supra).
8. Parshuram v. Tata Industrial Bank [1928] P. C. 180, 52 Bom. 571, 55 I. A. 249.
9. Rooney v. Stanton [1901] 17 T. L. R. 28 C. A.

Different classes of holders of shares.

Holders of shares partly paid up with uncalled balance paid in advance of calls and carrying interest are a different class to holders of fully paid shares and to other holders of partly paid shares, even if all the shares are ordinary shares 1. Should a class of shareholders disapprove the arrangement, the Court will, if satisfied that having regard to the value of the company's assets that class has no interest in them, disregard their disapproval 2.

Arrangement under s. 153.

A reconstruction of an existing company by winding up and sale of the entire assets for shares in a new company may be effected under s. 153 provided that proper provision is made for dissentient members 3. Any provision in the articles depriving members of their rights under this section is void 4. If the proposed reconstruction is carried out as a scheme of arrangement under s. 153, the rights of dissentient shareholders must be properly protected under this section ; otherwise the scheme will not be sanctioned 5.

Terms of the contract for sale.

A contract for sale usually provides that the purchasing company shall take over all the assets and pay all the liabilities of the old company, so that the business of the old company can be wound up at once ; but such an arrangement does not relieve the liquidator of the old company from the obligation of seeing that the debts are duly paid before the old company is dissolved. To leave everything to the new company is "a gross dereliction of duty by the liquidator" 6.

How to make the arrangement certain.

The parties to an arrangement under this section cannot be sure that it will be ultimately valid and binding. The only way to make the arrangement certain is to apply to the Court for a supervision order and, when the order is made, to apply that the arrangement may be sanctioned 7.

A company cannot sell its assets under this section to a foreign company 8.

Liquidator must not have restricted power.

The form of appointment embodied in a resolution under which in terms the liquidators become merely ministerial officers required to have regard to the supervision of the directors of the two companies proposed to be amalgamated in discharging their duties, was deprecated by their Lordships of the Judicial Committee in the under-mentioned case 9. It was observed that the Court, when it had an opportunity of doing so, would always cause it to be clearly understood that a liquidator in a voluntary liquidation, which was an essential condition of such an amalgamation, must not by the resolution appointing him be restricted in the exercise of his statutory duties 9.

Executors of deceased members.

Executors as representing the estate of a deceased member are members for the purposes of this section and as such are entitled to exercise the right of dissent. The right is not affected by an article prohibiting executors from "exercising any of the rights and privileges of a member, unless and until they shall have been registered" as shareholders, because such an article refers to an exercise of rights on their behalf and not on behalf of the testator's estate 10.

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1. United Provident Assurance Co. [1910] 2 Ch. 477.
2. Re Tea Corporation [1904] 1 Ch. 12.
3. Sandwell Park Colliery Co. (supra).
4. Payne v. Cork Co. (supra).
5. General Motor Cab Co. (supra).
6. Pulsford v. Devenish [1903] 2 Ch. 625 ; Argylles Ltd. v. Coxeter [1913] 29 T. L. R. 355.
7. Re New Flag Staff Mining Co. [1889] 5 T. L. R. 570.
8. Thomas v. United Butter Co. [1909] 2 Ch. 484.
9. Parsuram v. Tata Industrial Bank (supra).
10. Llewellyn v. Kasintoe Rubber Estates [1914] 2 Ch. 670.

Where executors or trustees have no power to invest in the shares of a new company, the Court may, upon application by the trustees, sanction their taking fully paid new shares, if it can be shown that the case is one of emergency not contemplated by the settlor, and a large loss is likely to result 1.

Where a will contains a specific bequest of shares, and between the date of the will and the death of the testator the company is reconstructed without substantial alteration in its constitution, the shares in the new company will pass under the bequest 2.

Stamp duty.

Although it is necessary to look at the surrounding circumstances in order to see whether there is an amalgamation or a reconstruction, yet in considering whether a particular instrument executed in purported performance of such amalgamation or reconstruction is subject to stamp duty or exempt from such duty regard must be had to the terms of that instrument 3.

Appeal.

If a liquidator in a voluntary winding up desires to appeal from the decision of a Judge, he ought first to obtain leave from the Judge ; otherwise, if his appeal fails, his costs may be refused out of the estate 4.

Sub-s. (6) reproduces sub-s. (6) of s. 234 of the English Act of 1929.

Duty of liquidator to call general meeting at end of each year.

208D. (1) *In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or as soon thereafter as may be convenient within ninety days of the close of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the liquidation.*

(2) *If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one hundred rupees.*

This section reproduces s. 235 of the English Act of 1929. Compare sub-s. (1) with sub-s. (2) of the original s. 216. Sub-s. (2) is new.

Final meeting and dissolution.

208E. (1) *As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.*

(2) *The meeting shall be called by advertisement specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in sub-section (1) of section 206 for publication of a notice under that sub-section.*

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1. *In re* New [1901] 2 Ch. 534.
2. Turner v. Leeming [1912] 1 Ch. 828.
3. Murex Ltd. v. Commissioners of Inland Revenue [1933] 1 K. B. 173. See also Bortex Cellulose Fibres Ltd. v. Commissioners of Inland Revenue [1933] 1 K. B. 158 and Oswald Tillotson Ltd. [1933] 1 K. B. 134.
4. City & County Investment Co. [1879] 13 Ch. D. 475 C.A.

(3) Within one week after the meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues :

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the said return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns mentioned in sub-section (3) shall forthwith register them and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within twenty-one days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

This section reproduces s. 236 of the English Act of 1929. It is almost the same as the original s. 217 with the exception of the proviso to sub-s. (3) which is new.

Sub-s. (4).

After the company has been dissolved the Court may, at any time within two years after the date of dissolution, on the application of the liquidator or of any person who appears to be interested, make an order declaring the dissolution to be void 1. This power will be exercised where upon a reconstruction the new company after agreeing to satisfy the liabilities of the old company has failed to perform its obligation 2.

Liability of liquidator continues.

Even after dissolution the liquidator remains liable in damages for breach of statutory duty to a creditor or contributory by distributing the assets without providing for his debt or claim after taking proper steps to ascertain it 3. If the dissolution is not set aside within two years, claims by the company against other persons vest in the Crown 4.

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1. S. 243.
2. Henderson's Nigel Co. [1911] 105 L. T. 370.
3. Pulsford v. Devenish [1903] 2 Ch. 625.
4. Re Higginson & Dean [1899] 1 Q. B. 325, and see notes to s. 194.

Petition for compulsory winding up after dissolution.

When a company has been dissolved under this section, no petition for its compulsory liquidation will be effective 1, unless the petition is ready for hearing before the lapse of three months mentioned in sub-s. (4) of this section 2. After dissolution no proceeding can be taken under section 235 for misfeasance 3, and winding up proceedings will not be re-opened unless fraud is proved 3.

Proviso to sub-s. (4).

Under the proviso to sub-sec. (4) the Court has jurisdiction to pass the order notwithstanding that the three months elapse before the order is made 4. It should be noted that the company will be deemed to be dissolved on the expiration of three months from the *registration* of the return and not from the *filing* of the return 5. If the registrar does not do his duty, or the necessary preliminaries which would justify registration have not been observed and the registrar insists on something more being done before he can take action, time does not begin to run until he takes action 5. If the liquidator is not satisfied with the decision of the registrar or if any contributory or creditor is dissatisfied with the conduct of the liquidator, either can go to the Court under s. 216 and claim that in the exercise of the powers conferred by that section the Court may take necessary action 5. The words "are fully wound up" must not be construed so narrowly and so strictly as to bring about a deadlock in the proceedings 6.

Special order of Court.

To relieve the directors and others from personal liability incurred by carrying on business after dissolution, the Court may make a special order; but this order will not be made in a flagrant case 7.

It is desirable that upon a reconstruction effective assignment of the old company's property should be taken 8.

A guarantee of interest on a company's debenture may continue after the company is dissolved 9.

Creditor's voluntary winding up.

Provisions applicable to a creditors' voluntary winding up.

209. *The provisions contained in sections 209A to 209H, both inclusive, shall apply in relation to a creditors' voluntary winding up.*

This section reproduces s. 237 of the English Act of 1929.

Procedure where ss. 209A to 209H not followed.

Where owing to an oversight, in the voluntary winding up the provisions of ss. 209A to 209H had not been followed, it was held that the best course to adopt would be to order a meeting of the creditors, and notice of the meeting should be sent by post to the creditors forthwith, and the company should cause notice of the meeting of the creditors to be advertised in the manner prescribed by sub-s. (1) of s. 206 for the publication of a notice under that sub-section, and the directors should cause a full statement of the position

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1. Pinto Silver Mining Co. [1878] 8 Ch. D. 273; London & C. M. Insurance Co. [1879] 11 Ch. D. 140; Schooner Pond Coal Co. [1888] 4 T. L. R. 411.
2. Pinto Silver Mining Co. (supra).
3. Coxon v. Gorst [1891] 2 Ch. 73.
4. Crookhaven Mining Co. [1866] 3 Eq. 69.
5. Shaw Bros. v. Army Canteen Board [1931] L. 500, 131 I. C. 747.
6. Ibid, following London & C. M. Insurance Co. [1879] 11 Ch. D. 140, 143.
7. Brown Bayleys' Steel Works [1905] 21 T. L. R. 374.
8. Friary Breweries [1899] 1 Ch. 86, 2 Ch. 261.
9. *Re* Fitzgeorge [1905] 1 K. B. 462.

of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before such meeting, and the directors should appoint one of their number to preside at the meeting. At such meeting the creditors would consider the question of nomination of a liquidator under the provisions of s. 209B and the appointment of a committee of inspection under s. 209C and other questions dealt with under ss. 209D to 209H [1].

Meeting of creditors.

209A. (1) *The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.*

(2) *The company shall cause notice of the meeting of the creditors to be advertised in the manner specified in sub-section* (1) *of section 206 for the publication of a notice under that sub-section.*

(3) *The directors of the company shall—*

(*a*) *cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid ; and*

(*b*) *appoint one of their number to preside at the said meeting.*

(4) *It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.*

(5) *If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors, held in pursuance of sub-section* (1) *of this section, shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.*

(6) *If default is made—*

(*a*) *by the company in complying with sub-sections* (1) *and* (2) ;

(*b*) *by the directors of the company in complying with sub-section* (3) ;

(*c*) *by any director of the company in complying with sub-section* (4) ;

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one thousand rupees and, in the case of default

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[1] Light of Asia Insurance Co. [1941] C. 30, [1940] 2 Cal. 325.

by the company, every officer of the company who is in default shall be liable to the like penalty.

This section reproduces s. 238 of the English Companies Act of 1929.

Compare sub-s. (1) with sub-s. (1) of the original s. 209.

Appointment of liquidator.

209B. *The creditors and the company at their respective meetings mentioned in section 209A may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator :*

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

This section reproduces s. 239 of the English Act of 1929. Compare the proviso with sub-s. (2) of the original s. 209.

Removal of liquidator.

The condition precedent for moving the Court for removing the liquidator is a meeting of the creditors in which the creditors shall determine whether an application shall be made to the Court for the appointment of any other person as liquidator in the place of or jointly with the liquidator appointed by the company [1].

Appointment of committee of inspection.

209C. *The creditors at the meeting to be held in pursuance of section 209A or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number :*

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

This section reproduces s. 240 of she English Act of 1929.

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1. Kameshwar v. Ambler Slate & Stone Co. [1936] 162 I.C. 218.

Fixing of liquidators' remuneration and cesser of directors' powers.

209D. (1) *The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators, and where the remuneration is not so fixed, it shall be determined by the Court.*

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

This section reproduces s. 241 of the English Act of 1929. Compare sub-s. (2) with cl. (iii) of the original s. 207 and see notes under s. 208A *ante*.

Power to fill vacancy in office of liquidator.

209E. *If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by or by the direction of, the Court, the creditors may fill the vacancy.*

This section reproduces s. 242 of the English Act of 1929. Compare the original s. 210, sub-s. (1).

Application of section 208C to a creditors' voluntary winding up.

209F. *The provisions of section 208C shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.*

This section reproduces s. 243 of the English Act of 1929.

Duty of liquidator to call meetings of company and of creditors at end of each year.

209G. (1) *In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the winding up.*

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one hundred rupees.

This section reproduces s. 244 of the English Act of 1929. Compare sub-s. (1) with the original s. 216 (2).

Final meeting and dissolution.

209H. (1) *As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a* *meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.*

(2) Each such meeting shall be called by advertisement specifying the time, place and object thereof and published one month at least before the meeting in the manner specified in sub-section (1) of section 206 for the publication of a notice under that sub-section.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues :

Provided that, if a quorum (which for the purposes of this section shall be two persons) is not present at either such meeting, the liquidator shall, in lieu of such return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and in respect of each such meeting either of the returns mentioned in sub-section (3) shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within ten days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails to do so he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

This section reproduces s. 245 of the English Act of 1929. Compare the original s. 217 and see notes under s. 208E *ante*.

Members' or creditors' voluntary winding up.

Provisions applicable to every voluntary winding up.

210. *The provisions contained in sections 211 to 218, both inclusive, shall apply to every voluntary winding up whether a members' or a creditors' winding up.*

This section reproduces s. 246 of the English Act of 1929.

Distribution of property of company.

211. *Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities* pari passu *and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.*

This section reproduces s. 247 of the English Act of 1929. The word "property" which occurs both in the English Act of 1908 and 1929 replaces the word "assets" of cl. (i) of the original section 207 which may be compared. But there is little difference between the two words.

Application of assets.

When in a voluntary liquidation the assets have been collected, they shall be applied, *first* in payment of the costs, charges and expenses properly incurred in the winding up 1, *secondly* in payment of the debts entitled to preferential payment and *thirdly* in payment of the debts of the ordinary creditors. The surplus assets, which mean the fund remaining after payment of the debts and the cost of liquidation 2, must then be divided among the members in accordance with the rights conferred on them by the memorandum and the articles of association. In default of any such provision, and where some of the shares are fully paid and others are only partly paid, the liability of the partly paid shareholders must not be disregarded; and after all the capital has been returned, the balance should be divided among the shareholders in proportion to the number of shares held by them respectively 3. If however the assets are not sufficient to repay the capital in full, those members who have paid more on the shares than others must first be repaid the excess 4, and if necessary, the liquidator may make calls on the partly paid shareholders for the purpose of equalizing the amounts paid up 5.

Where a resolution gave to the holders of certain preference shares "a preferential rights as regards repayment of capital and otherwise as hereinafter mentioned" and so that they should accordingly "be entitled to have the surplus assets applied, *first* in paying off the capital paid up on the preference shares held by them respectively and, *secondly* in paying off the arrears, if any, of the preferential dividend......to the commencement of the winding up before any return or payment of capital is made to the holders of other shares", it was held that as the resolution did not deal with the whole of the assets, except in the case of a deficiency, it did not deprive the preference shareholders of a right to share in an ultimate surplus, and in the winding up the surplus assets must be rateably distributed between the ordinary and the preference shareholders 6.

In the case of a voluntary winding up of a company occupying certain premises as lessees, there is a well defined distinction between amounts due for rent before the date of the winding up order or a resolution for voluntary winding up and the amounts that become due after that date. In respect of the former amounts the lessor is entitled

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1. S. 217.
2. Crichton's Oil Co. [1902] 2 Ch. 86.
3. Birch v. Cropper [1889] 14 App. Cas. 525.
4. Ex parte Maude [1870] 6 Ch. App. 51.
5. Anglo-Continental Corpn. [1898] 1 Ch. 327; Anglesea Colliery Co. [1866] 1 Ch. App. 555.
6. Re Fraser and Chalmers [1919] 2 Ch. 114 [re Espuela Land and Cattle Co. (1909) 2 Ch. 187 applied; see also William Metcalfe & Sons (1933) 1 Ch. 142 C. A.; re National Telephone Co. (1914) 1 Ch. 755 not followed].

only to rateable distribution ; but as regards the latter amounts the owner of the premises occupied by the company and continued to be occupied for the purposes of the liquidation proceedings by the liquidator is entitled to recover those amounts in full [1].

Where a bank received cheques as agent for collection, there is no relation of debtor and creditor between the bank and its customers ; so the liquidator of the bank must pay out of the assets in his hands the full amount of a cheque which passed from the bank to another bank and found by the latter not in order [2].

Interest on debts.

So long as a company is in voluntary liquidation, interest continues to accrue on debts carrying interest [3]. But in the case of an ordinary insolvent company the bankruptcy rules apply [4], and no claim can be sustained for interest subsequent to a judgment [5].

Consequences of irregular distribution.

If a voluntary liquidator distributes the assets without taking proper steps to ascertain the creditors and carries through the liquidation down to dissolution, he is liable in damages to unpaid creditors of whose claims be was aware and who had no notice of the liquidation until after dissolution [6]. So if the liquidator distributes the assets without making provision for future rent of leasehold properties under the terms of the lease, he commits a breach of his statutory duty under this clause and will consequently be liable in damages, for this is a liability which ought to have been admitted to proof by the liquidator under s. 228 [7]. So also he will be personally liable for costs given against the company in litigation instituted by him, if he applies the available assets in paying his own solicitor's costs [8].

No statutory bar to execution.

This section is not itself a statutory bar to the progress of an execution proceeding against a company gone into voluntary liquidation, unless and until an order has been obtained from a Court having jurisdiction under this Act either for the winding up or for stay of proceedings, and the liquidator or any other creditor dissatisfied with the action taken by a decree-holder is entitled to move the Court having jurisdiction under this Act [9]. But where judgment has been recovered against a company which is in voluntary liquidation, the invariable practice of the Court is to stay execution of the judgment unless there are very exceptional reasons for exercising its discretion otherwise [10]. For other cases see notes to s. 216.

Right of preference shareholders.

As long as a company is a going concern, the preference shareholders are entitled only to the preferential dividend. But on the voluntary winding up this preference is determined and thenceforward the preference shares retain no preference or priority over ordinary shares [11]. In the last noted case it was held that according to the constitution of the company the *prima facie*

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1. Abdul Quadir v. Akhtar Husain [1936] O. 11, 158 I. C. 577 relying on Brown, Bayley & Dixon's case [1880] 18 Ch. D. 649 ; Silkstone &c. Iron Co. [1880] 17 Ch. D. 158 & South Kensington Co-operative Stores [1880] 17 Ch. D. 161.
2. In re Alliance Bank [1925] C. 54, 40 C. L. J. 223, 84 I. C. 1018.
3. East of England Banking Co. [1868] 4 Ch. App. 14.
4. S. 229.
5. Thomas Salt & Co. [1908] W. N. 63, 98 L. T. 558.
6. Pulsford v. Devenish [1903] 2 Ch. 625 ; Argylls v. Coxeter [1913] 29 T. L. R. 355.
7. James Smith & Sons, Ltd. v. Goodman [1936] 1 Ch. 216 ; see also Pulsford v. Devenish (supra) and Hardy v. Fothergill [1888] 13 App. Cas. 351.
8. Pacific Coast Syndicate [1913] 2 Ch. 26.
9. Surajbhan v. Boot and Equipment Factory [1916] 38 All. 407, 14 A. L. J. 573. Now see the new sub-s. (2) of s. 216.
10. Anglo-Baltic & Mediterranean Bank v. Barber & Co. [1924] 2 K.B. 410 C.A.
11. Madame Tussaud & Sons [1927] 1 Ch. 657.

presumption in favour of equality of distribution amongst all the shareholders ought to prevail.

Remedy of creditors.

The effect of the section is that even in voluntary liquidation the remedy of the creditors is to take only what he can take under the scheme of the liquidation and no more ; and a creditor who obtains a decree against the company cannot recover the whole amount due under the decree, but only a share in terms of the scheme of liquidation [1]. But the Calcutta High Court has taken the view that the provision of the section, that the assets of the company shall be applied in satisfaction of its liabilities *pari passu*, is intended for guidance of the voluntary liquidator and does not control the Court's power to entertain applications for execution against the assets of the company and realize the full amount to the detriment of the other creditors [2]. This section is no bar by itself to the progress of execution unless and until an order has been obtained from the Court under s. 215 (now s. 216) for stay [3]. The executing Court has no concurrent jurisdiction with the Court under the Companies Act [3]. Attachment creates no charge or lien upon the attached properties in favour of the attaching creditor. It does not make him a secured creditor, nor does it confer any title on him. Until the property is actually sold, the position of the attaching creditor is not higher than that of one who has a mere money claim against the judgment debtor, and it would be going against the statutory provisions of this section to allow the execution to proceed [4].

The word "property" includes unpaid capital recoverable from the contributories [5].

Distribution of assets.

This section must be read subject to s. 230 as to preferential payments [6]. Subject to this the assets must be applied *pari passu* in satisfaction of the liabilities of the company [7]. As to the distribution of assets, where the articles provide that if the company should be wound up, the assets should be so distributed that the losses would be borne by the members in proportion to the capital paid or which ought to have been paid up ; see the case noted below [8].

Powers and duties of liquidator in voluntary winding up.

212. (1) *The liquidator may—*

(*a*) *in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection, exercise any of the powers given by clauses (d), (e), (f) and (h) of section 179 to a liquidator in a winding up. The exercise by the liquidator of the powers given by this clause shall be subject to the control*

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[1] Bank of Upper India v. Shiv Ram [1930] L. 299, 118 I.C. 387 ; National Bank of Upper India v. Lakhpat [1925] 92 I.C. 144.

[2] Jyoti Prasad v. Patmohana Collieries [1931] C. 509, 58 Cal. 913, 35 C. W. N. 299, 133 I.C. 566. In a later case the Lahore High Court also seems to take this view : Buta Singh & Sons Ltd. v. Peoples Bank of N. India [1931] L. 389, 131 I.C. 379.

[3] Buta Singh & Sons Ltd. v. Peoples Bank of N. India (supra).

[4] Buta Singh & Sons Ltd. v. Peoples Bank of N. India. (supra).

[5] Morris' case [1872] 7 Ch. App. 200 (204), 8 Ch. App. 800 ; Webb v. Whiffin [1871] L.R. 5 H.L. 711.

[6] H. J. Webb & Co. [1922] 2 Ch. 369, 384, 402, affirmed, *sub nom.* Food Controller v. Cork [1923] A. C. 647.

[7] Black & Co. [1873] 8 Ch. App. 254.

[8] Kinatan Rubber Estate [1922] W. N. 292, [1923] 1 Ch. 124.

of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers ;

(*b*) *without the sanction referred to in clause* (*a*), *exercise any of the other powers by this Act given to the liquidator in a winding up by the Court ;*

(*c*) *exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be* prima facie *evidence of the liability of the persons named therein to be contributories ;*

(*d*) *exercise the power of the Court of making calls ;*

(*e*) *summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.*

(2) *The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.*

(3) *When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.*

This section reproduces s. 248 of the English Companies Act, 1929. Sub-s. (1) (a) is almost the same as cl. (v) of the original section 207. Sub-s. (1) (e) corresponds to sub-s. (1) of the original s. 216 and sub-s. (3) is nearly the same as cl. (vii) of the original s. 207.

Sub-s. (1). As to the powers of the Court of settling the list of contributories and of making calls, see ss. 184 and 187.

In a voluntary winding up, as distinct from a compulsory winding up, it is the liquidator who without any order from the Court may make a call upon his own responsibility and he would be quite in order in such a case to make a call and receive payment 1.

Rules relating to list of contributories.

A voluntary liquidator has power to settle the list of contributories 2, and to rectify the register of members 2. The rules relating to the list of contributories do not apply to a voluntary winding up; but the practice in a winding up by the Court should be followed as closely as possible.

A person whose name is settled on the list of contributories is liable for any calls made by the liquidator, even though the contributory has received no notice thereof. The liquidator may also obtain an order to enforce any calls made by the directors before the winding up commenced 3. Notice of settlement of the list of contributories is usual, but not necessary, and absence of notice is no defence to an action for

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1. Montogomery v. Sikdar Iron Works [1932] C. 691, 36 C. W. N. 409.
2. Taylor, Phillips & Rickard's case [1897] 1 Ch. 298.
3. Stone v. City and County Bank [1877] 3 C. P. D. 282 C. A.; Hiram Maxim Lamp Co. [1903] 1 Ch. 70.

calls 1. Provisions in the articles as to interest on calls do not apply to calls made by liquidators 2.

Fully paid shareholders. Fully paid shareholders are contributories in a voluntary winding up, and a call made to adjust the rights of contributories *inter se* after all debts and costs provided for is valid 3.

Right of set off. A shareholder in a voluntary as well as in a compulsory winding up cannot set off a debt owing to him by the company against a call 4. A valid forfeiture of shares before the commencement of the winding up cannot be cancelled by the liquidator 5.

Delegation of powers. The liquidators cannot delegate their powers generally to one of their number unless the power to do so is given to them at the time of their appointment 6. In case of death of one liquidator the survivor cannot act 7.

Joint liquidators. Sub-s. (3). Where one of several liquidators accepted a bill of exchange without authority of others, it was held that the company was not liable for it 8.

Power of Court to appoint and remove liquidator in voluntary winding up.

213. *(1) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.*

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

This section reproduces s. 249 of the English Act of 1929. Sub-s. (1) is nearly the same as cl. (viii) of the original s. 207 but is more general in its terms. Sub-s. (2) is identical with cl. (ix) of the original s. 207.

Appointment & removal of liquidator. If no liquidator is appointed the Court may appoint a liquidator, or where the validity of his appointment is questioned the Court may confirm the appointment 9. It may also on cause shown remove a liquidator and appoint another liquidator. The application to remove a liquidator must be made by a liquidator or creditor or contributory of the company 10, but not a company which has purchased the assets 10. As to what is due cause for removing a liquidator see notes to s. 176. The Court may also appoint an additional liquidator 11, or a liquidator in place of one retiring 12. An application for removal may be made by a creditor, contributory or a co-liquidator but no one else 13.

The distribution of circulars seeking support to an application for removal of a liquidator will not be restrained by the Court 14. A voluntary liquidator may be

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1. Brighton Arcade Co. v. Dowling [1868] L. R. 3 C. P. 175; London Bank of Scotland [1867] W. N. 114.
2. Welsh Flannel & Tweed Co. [1875] 20 Eq. 360.
3. Anglesea Colliery Co. [1866] L. R. 2 Eq. 379, 1 Ch. App. 555.
4. Black & Co.'s case [1872] 8 Ch. App. 254.
5. Dawe's case [1868] L. R. 6 Eq. 232.
6. London and Mediterranean Bank [1868] 3 Ch. App. 651.
7. Metropolitan Bank [1876] 2 Ch. D. 366.
8. Bolognesi's case [1870] 5 Ch. App. 567.
9. Indian Zoedone Co. [1884] 26 Ch. D. 70 C. A.
10. New de Kaap [1908] 1 Ch. 589; Sheppy Portland Cement Co. [1892] W. N. 184, 68 L. T. 83. But sub-s. (1) of this new section is general in its terms.
11. Sunlight I. G. Lamp Co. [1900] 2 Ch. 728.
12. Sheppy Portland Cement Co. (supra).
13. New de Kaap (supra).
14. New G. C. Exploration Co. [1901] 1 Ch. 860.

removed on the ground that he is not in a sufficiently independent position 1. A liquidator may appeal from an order removing him 2.

Jurisdiction.

The jurisdiction of the Court to remove a liquidator is not confined to cases where there is personal unfitness. The cause shown is to be measured by reference to the real, substantial and honest interest of the liquidation and to the purpose for which liquidators are appointed. Fair play to the liquidators is not to be left out of sight; but the real interest of the liquidation is the principal thing for consideration 3.

Power to remove is discretionary.

The removal of a liquidator is a matter of judicial discretion and the Court of Appeal will not interfere if satisfied upon evidence that there was a cause shown 4. The Court will appoint a new liquidator if satisfied that it would be in the best interest of all concerned 5.

Notice by liquidator of his appointment.

214. (1) *The liquidator shall, within twenty-one days after his appointment, deliver to the registrar for registration a notice of his appointment in the form prescribed.*

(2) *If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.*

This section reproduces s. 250 of the English Act of 1929 and is almost identical in terms with the original s. 208.

Arrangement when binding on creditors.

215. (1) *Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.*

(2) *Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.*

This section reproduces s. 251 of the English Act of 1929, and is almost identical in terms with the original s. 212.

Scheme of reconstruction.

Where there was no *mala fide* or fraud in a proposed scheme of reconstruction, nor was it a sham or device, although the result would be that the majority of the shareholders would obtain control of the undertaking and compel the minority to accept a cash payment in lieu of shares in a new company to which that undertaking was to be sold, it was held that the scheme was one that ought not to be interfered with by the Court 6.

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1. Charterland Gold Fields [1909] 26 T. L. R. 132.
2. Adam Eyton Ltd. [1887] 36 Ch. D. 299.
3. Kai Khusru v. Tata Industrial Bank [1924] 48 Bom. 471, 26 Bom. L. R. 237; Rubber & Produce Investment Trust [1915] 1 Ch. 382.
4. Urmston G. Steamship Co. [1901] 17 T. L. R. 553.
5. Baron Cigarette Machine Co. [1912] 28 T. L. R. 394; Sheppy P. Cement Co. (supra).
6. Castello v. London G. Omnibus Co. [1912] 107 L. T. 575 C. A.

Sub-s. (1). Sub-s. (1) applies to an arrangement entered into during a voluntary winding up or shortly before the passing of a resolution for a voluntary winding up 1. A composition by a company with its creditors intended to make the company solvent and therefore to prevent a voluntary winding up is not an "arrangement" within the meaning of this section 1.

The last cited case illustrates the danger of taking a section from the English Act and inserting it bodily in the Indian Act without considering the effect of the language used; for Maugham J. observes: "I may add that the section (s. 251 of the English Act corresponding to the above s. 215) presents a certain number of practical difficulties. It says nothing about, and makes no provision for, a meeting of creditors, and 'creditors' must be taken to include secured as well as preferential creditors, though there is no provision for a valuation of securities. The Legislature seems to have thought that three-fourths in number and value of the creditors secured and unsecured ought to be able to bind a minority of them who may never even have heard of the proposed arrangement. The Court, if applied to within three weeks according to sub-section (2) of the section, has power only to 'amend, vary or confirm the arrangement'; the draftsman seems to have left out any words showing that the Court may set it aside, though by sub-section (1) the arrangement is '......subject to any right of appeal under this section ......' Nor is it easy to construe the words 'the completion of the arrangement.'" Inspite of the difficulties pointed by Maugham J. in 1931, the authorities responsible for the amending Act of 1936 inserted s. 251 of the English Act bodily into the Indian Act.

Power to apply to Court to have questions determined of powers exercised.

216. *(1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.*

(2) The liquidator or any creditor or contributory may apply for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

Such application shall be made—

- *(a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court, and*
- *(b) if the attachment, distress or execution is levied or put into force in any other Court, to the Court having jurisdiction to wind up the company.*

(3) The Court, if satisfied that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

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1. Contal Radio Ltd. [1932] 2 Ch. 66.

This section is a reproduction of s. 252 of the English Act of 1929 and substantially reproduces the original s. 215. Sub-s. (2) is entirely new. It makes express provision for setting aside attachment &c. put in force against the company in a voluntary winding up and states to which Court an application for the purpose is to be made. For fuller discussion see Introduction.

Object.

"The object of the Act was", observed Sir W. James, L. J., "that a company and its directors should be left, if possible, to settle their affairs without coming to the Court at all, either for a compulsory winding up or for a winding up under supervision, but to provide them under the 138th section of the English Act of 1862 (corresponding to the present section) with the means of access to this Court whenever any question arose, in the course of a voluntary winding up, just in the same way as when any question arose, in the case of a compulsory winding up or winding up under supervision...No doubt if a liquidator did not do his duty, if he did not take the opinion of the Court in such a case as this, for example, it would be in the power of a creditor to apply to this Court for a proper order which would give him some opportunity of obtaining the decision of the Court; but if a liquidator is minded to bring a matter before the Court under section 138 I do not myself see the reason why the question should not be determined without obliging the contributories to present a petition for a compulsory winding up or a supervision order, which would only lead to increased expense" 1.

"It is the policy of the Act", observed their Lordships of the Judicial Committee, "that all claims competent to the company should be brought within the scope and control of the winding up and that not only in a compulsory winding up." Therefore the procedure of obtaining order of the Court under this section is not to be discouraged 2.

Scope.

Exercise of powers under this section must be in cases where it is just and beneficial, not only to the petitioner, but to all parties. The Court is empowered under this section on the petition of persons, named in the first sub-section, to exercise certain powers for the assistance of the winding up. Sub-s. (1) is very limited: It speaks of determining any question arising in the winding up. Under sub-s. (2) [now sub-s. (3)] the Court has to be satisfied that the determination of the question or the required exercise of power will be just and beneficial. Thus a person has no right to come and say that there is no such thing as winding up in a particular case, that is to say, the winding up is irregular and void for another reason 3.

Who can apply.

An application under this section cannot be made by a person who is not the liquidator or a creditor or a contributory 4. Where the registrar does not register the return under s. 217 (4) [now cl. (4) of ss. 208E & 209H] the liquidator, a contributory or creditor can apply under this section to the Court for taking proper action 5.

The liquidator can apply for determination of any question fairly arising in the liquidation 6, but the practice now is only to answer specific questions. Claims for damages will not be decided on such application 7.

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1. Rance's case [1870] 6 Ch. App. 104 at p. 115.
2. Lloyd-Owen v. Bull [1936] P.C. 322 at p. 323.
3. Kameshwar v. Ambler Slate & Stone Co. [1936] 162 I.C. 218.
4. New de Kaap [1908] 1 Ch. 589.
5. Shaw Bros. v. Army C. Board [1931] L. 500, 131 I.C. 747.
6. Central de Kaap Gold Mines [1899] W.N. 216, 69 L. J. Ch. 89.
7. Crawford v. Mc Cullock [1909] S.C. 1063.

This section (formerly s. 215) is exhaustive of the persons who are entitled to make the applications, and the Registrar of Companies not being one of them has no locus *standie* to make an application to remove a liquidator 1.

Court's power.

The Court will not act under this section, if it is not satisfied that exercise of the power will be "just and beneficial" 2. But the Court will not readily cut down its powers under this section 3. Under this section the Court can appoint a liquidator in a voluntary winding up not only where there is no liquidator acting or in the place of a liquidator who is by the Court removed from his office, but also in any other case where due cause is shown for appointing a liquidator, e. g., when an additional liquidator is required, and the appointment may be made on the application of the existing liquidator 4. But where the application asks for the appointment of official liquidator to a company in voluntary liquidation, the Court cannot treat the application as an application for compulsory winding up of the company. If it is treated as a petition for supervision or some such order as the Court might be empowered to make in the case of a compulsory winding up, it is obvious that in order to make such an order the Court would have to be satisfied that the winding up had taken place. A supervision order can be made only where there is a valid voluntary winding up. But where the whole case of the petitioner is that the winding up is *ultra vires* and void, the petition cannot be treated as one for supervision 5. The assistance of the Court is not the only method open to a voluntary liquidator. He has power to enforce calls by suit 6.

Court's duty.

"A Judge in winding up," say the Judicial Committee, "is the custodian of the interests of every class affected by the liquidation. It is his duty, even if it be in a voluntary liquidation that opportunity occurs, to see to it that all assets of the company are brought into the winding up. In authorising proceedings, especially if they may or will involve some drain upon the assets, he must satisfy himself as to their probable success : where they involve no possible charge on assets, he will nevertheless be careful to see that any action taken in the company's name under his authority is not vexatious or merely oppressive" 7.

Court may order stay of proceedings.

Voluntary liquidation does not by itself suspend the right to commence or continue legal proceedings against the company, and if the liquidator is confronted with a decree which has to be satisfied out of the assets of the company before distribution of the assets among the creditors, his proper remedy is to approach the Court, meaning the Court within the meaning of s. 2 (3), under this section 8. When proper cause is shown, the Court having jurisdiction to wind up the company has power under this section read with s. 169 to make an order staying all proceedings against the company 9. The Court may restrain actions 10, executions 11 and distress 12. Where an order is made staying

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1. Peoples International Travel &c. Co. [1941] B. 25, 42 Bom. L. R. 1021.
2. Metropolitan Bank [1880] 15 Ch. D. 139.
3. Union Bank &c. [1880] 13 Ch. D. 808. 4. Sunlight I.G. Lamp Co. [1900] 2 Ch. 728.
5. Kameshwar v. Ambler Slate & Stone Co. (supra).
6. Saraswati Trading Corpn. [1928] A. 675, [1929] A. L. J. 103, 111 I.C. 654 ; see also Brighton Arcade Co. v. Dowling [1878] 3 C.P. 175, 18 L. T. 543.
7. Lloyd-Owen v. Bull [1936] P.C. 422 (424).
8. Jyoti Prasad v. Patmohana Collieries [1931] C. 569, 58 Cal. 913, 35 C.W.N. 299, 133 I.C. 566 ; Atul v. Tulsi [1935] L. 991.
9. Currie v. Consolidated K. C. Corporation [1906] 1 K. B. 134 ; National Bank of Upper India v. Gopal Das [1925] O. 630, 91 I. C. 1053.
10. Freeman v. General Publishing Co. [1894] 2 Q. B. 380.
11. Westbury v. Twigg & Co. [1892] 1 Q. B. 77.
12. Roundwood Colliery Co. [1897] 1 Ch. 373.

action against a company which is being voluntarily wound up, the Court has power, in a proper case, to order the plaintiff to pay the cost of the application 1. The Court can exercise all the powers exercisable in a compulsory winding up 2. The Court will exercise the power where the exercise will be just and beneficial and it has a wide discretion in the matter 3. After having been unsuccessful in the executing Court the voluntary liquidator cannot approach the liquidating Court and ask for a declaration that the auction sale held by the executing Court is invalid 4.

Where in a suit instituted by a company long before it went into liquidation a decree for costs was made against the company after liquidation, the liability of the company under the decree should not ordinarily be treated in a different way from other liabilities and the decree-holder should not be allowed to execute the decree against the company. He must prove for his claim with the other creditors 5.

The power to make an order for the stay of proceedings under a voluntary winding up has been given to the Court by this section read with s. 173 6. In dealing with such an application the Court has to see whether a stay will be conducive or detrimental to commercial morality and to the interests of the public at large 7.

In the case of a voluntary liquidation the *onus* is on the liquidator to show that an order should be made staying an action, for *prima facie* the ordinary tribunal is the proper one to decide upon a claim against the company. The proceedings may be stayed when sufficient ground is shown to do so, *e.g.*, when existence of the liability is substantially admitted and the dispute is only as to what is the exact amount due 8. If the claim is undisputed a stay will be granted as a matter of course ; but if the debt is disputed the Court may allow the action to proceed 9. Unless very exceptional circumstances exist, the Court in its discretion will always stay an execution against a company after it has gone into voluntary liquidation 10. The plaintiff in the action which is stayed is entitled to his costs 11.

Where the company is in a solvent condition and the resolution for voluntary winding up was passed with a view to the company being restarted after the claims of the creditors have been satisfied, proceedings should be stayed subject to the condition that all shareholders should be given the option of retiring from the company or continuing its members 12.

Examination of persons.

A voluntary liquidator is entitled to ask the Court for an order for examination of persons who were connected with the company with regard to its management or formation, and the Court has power to make such an order 13.

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1. Freeman v. General Publishing Co. [1894] 2 Q. B. 380.
2. Black & Co. [1873] 8 Ch. App. 254 at p. 263.
3. Buta Singh v. People's Bank (infra).
4. Atul v. Tulsi (supra). But under the new sub-s. (2) the executing Court, unless it is the High Court, has no jurisdiction to set aside attachment &c.
5. National Bank of Upper India v. Gopal Das (supra).
6. Sri Jogasram Pharmacy [1928] A. 265, 26 A.L.J. 249.
7. Punjab Co-operative Bank [1919] 41 I. C. 412.
8. Marwar Bank v. Panna Lal [1915] 27 I. C. 685.
9. Currie v. Consolidated K. C. Corpn. (supra).
10. Anglo-Baltic & Mediterranean Bank v. Barber & Co. [1924] 2 K. B. 410 ; Buta Singh v. People's Bank [1931] L. 589, 131 I. C. 379.
11. Pierce v. Wexford Picture House Co. [1915] 2 I. R. 310.
12. Marwar Bank v. Panna Lal (supra).
13. Nowraji v. Luxman [1920] 22 Bom. L. R. 219, 55 I.C. 831.

Delivery of books.

When the delivery of the books of the company is necessary for the purpose of liquidation, the liqudator in a voluntary winding up is entitled to an order for delivery of the books without prejudice to an alleged right of lien [1].

Cost of voluntary winding up.

217. *All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.*

This section reproduces s. 254 of the English Act of 1929 and is the same as the original s. 218.

Priority.

Liquidator's remuneration.

Compare s. 193. When the assets of a company in voluntary liquidation are insufficient to discharge its liabilities, the Court has power under this section read with s. 193 to make an order, in the exercise of its discretion, as to the payment thereout of the costs, charges and expenses (including the liquidator's remuneration) in such order of priority as it thinks just and *prima facie* all the expenses ought to be paid before the liquidator's remuneration [2]. In the last cited case the liquidator was authorized to retain the remuneration received by him before the date of the notice of the assessment of income tax.

Meaning of "all other claims."

Costs of litigation during the liquidation ordered to be paid, whether the order is only for payment or payment out of the assets, rank before the liquidator's own costs of the general costs of the winding up [3]. This section does not give the liquidator any priority over secured creditors, except in so far as he may be entitled in respect of matters of which the mortgagees had the benefit, *e.g.*, expenses of collecting the estate for them [4].

Cost of litigation.

The costs of litigation ordered to be paid out of the assets are payable immediately and in full in priority to the general cost of the liquidation [5]. The rule that costs of unsuccessful litigation incurred by a liquidator, whether in a voluntary or compulsory winding up, are payable to the party entitled out of the assets of the company in priority to the costs of liquidation applies whether the order simply directs payment of costs, or directs that the costs be paid out of the assets of the company, or that the liquidator do pay the costs with liberty to recoup himself out of the assets [6]. The onus is on the liquidator to show that the condition of the assets is such that immediate payment cannot be made, and if he shows that other persons have a prior right to or are entitled *pari passu* with the successful litigant, no order for payment will be made without providing for the other claims. The date of the order gives no priority, but payment will not be indefinitely postpond until all claims have come in [7].

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1. Findlay v. Waddel [1910] S. C. 670.
2. Beni-Felkai Mining Co. [1934] Ch. 406.
3. Home Investment Society [1880] 14 Ch. D. 167 ; Dominion of Canada Plumbago Co. [1884] 27 Ch. D. 33 ; London Metallurgical Co. [1895] 1 Ch. 73 ; Pacific Coast Syndicate [1913] 2 Ch. 26.
4. Regent's Canal Iron Works Co. [1876] 3 Ch. D. 411.
5. London Metallurgical Co. (supra).
6. Pacific Coast Syndicate (supra) ; Manecklal v. Surjapur Mills Co. [1928] B. 252, 30 Bom. L. R. 549, 52 B. 477.
7. Manecklal v. Surjapur Mills Co. (supra).

After costs &c., company's debts and liabilities.

After the costs, charges and expenses have been paid the assets are to be applied in payment of the company's debts and liabilities. When the creditors have been paid in full, any surplus is to be distributed amongst the contributories according to their rights *inter se* as adjusted by the Court 1. In this respect compare the provisions of s. 193.

Solicitor's claim.

In the absence of an express agreement the solicitor to a voluntary liquidator has no claim for the payment of his costs against the liquidator personally. His claim is against the assets of the company only 2 ; but his costs are payable in priority to the liquidator's remuneration 3. The liquidator is not personally liable to the solicitor, whether the winding up be compulsory 4, or voluntary 2. As to the solicitor's lien see the case noted below 5.

Liquidator's personal liability.

In proceedings in liquidation where the liquidator is the applicant he may, in case of failure, be ordered to pay the costs personally, when the order is usually without prejudice to his right to apply for liberty to retain them out of the assets 6.

Landlord's right.

When the liquidator in a voluntary winding up elects, for the benefit of the creditors, to occupy lease-hold premises that are part of the estate, the landlord is entitled to have the covenants of the lease carried out, and to be paid in full, out of the assets got in, all claims due and owing for repairs under the covenant 7.

Saving for rights of creditors and contributories.

218. *The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.*

The section reproduces s. 255 of the English Act of 1929 and is almost identical with the original s. 219.

Creditor's right.

A creditor of a company in voluntary winding up, on proving his judgment debt and that his debt has not been paid, is entitled *ex debito justitiæ* to an order for compulsory winding up of the company 8. But he is not entitled, as of right, to ask the Court to convert a voluntary winding up into a compulsory one, and before he can obtain such an order, he must show that he, as a creditor, could obtain, had there been no voluntary winding up, an order for compulsory winding up 9.

Liquidator's right.

There is no section in the Act which enables the liquidator in a voluntary winding up to ask the Court to pass an order compulsorily winding up the company 9.

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1. Brich v. Cropper [1889] 14 App. Cas. 525.
2. *Re* Trueman's Estate, Hooke v. Piper [1872] L. R. 14 Eq. 278.
3. *Re* Massey [1870] L. R. 9 Eq. 367.
4. *Ex parte* Watkin [1876] 1 Ch. D. 130 ; Dominion of Canada Plumbago Co. (supra).
5. Rapid Road Transit Co. [1909] 1 Ch. 96.
6. W. Powell & Sons [1896] 1 Ch. 681 ; Hounslow Brewery [1896] W. N. 45.
7. Levi & Co. [1919] 1 Ch. 416 ; Oak Pits Colliery Co. [1882] 21 Ch. D. 322, 329.
8. James Mellward & Co. [1940] 1 Ch. 333 C. A.
9. Sri Gopal v. Narain Das [1938] A 623, [1938] All. 945.

Voluntary winding up when bar to compulsory order.

An existing voluntary winding up is generally a bar to a contributory obtaining a compulsory order 1. But it is no bar, if the general body of creditors desire it although no individual creditor proves that his rights will be prejudiced by a voluntary winding up 2; for this section must be read with ss. 174 and 239. The Court may however in its discretion refuse the order if it will not benefit the creditors generally, but only the petitioning creditors 3.

Where the rights of the creditors or the contributories are not shown to be prejudiced by a voluntary winding up, the Court is not justified in ordering a compulsory winding up, though the application to that effect was filed before the company decided to go into voluntary liquidation 4. But where the scheme for reconstruction is eminently unfair to an independent minority of the shareholders, the Court will, on the petition of one of them, stop the scheme by making a compulsory order, if the contract with the new company has not been executed 5.

Cases where the order will be made.

A compulsory order may be made on the application of creditors, although the company is in voluntary liquidation, where the same person has been appointed receiver in the debenture-holder's action and as the liquidator, or where a *prima facie* case of fraud is established as to the formation of the company or the conduct of its business, or where there has been great delay in the voluntary liquidation, or where the conduct of the liquidation is unsatisfactory, or where the company's liabilities are very great, or where the foundation of the voluntary liquidation, as for instance, a reconstruction, is gone, or where the passing of the resolution is a breach of faith, or where the circumstances show that a public investigation is required 6.

The Court will order a company to be wound up compulsorily, if the resolution for voluntary winding up was procured by votes of persons whose conduct requires investigation 7, or if it was passed in furtherance of a reconstruction scheme which has fallen to the ground 8, or if the resolution for voluntary winding up is invalid 9. But no such order will be passed on the petition of a fully paid contributory, unless the Court is of opinion that some benefit will result to the shareholders from a winding up by the Court 10.

An unfair and improper sale to a new company sanctioned under s. 213 (now s. 208C) by a majority who have other interests to serve will be a ground for a compulsory order on the petition of the objecting minority 11.

If a *prima facie* case of malpractice is made out, a compulsory order will be made; but the malpractice does not include fraud upon the outside world in the course of its business 12.

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1. Hadleigh Castle Gold Mines [1900] 2 Ch. 419.
2. E. Bishop & Sons [1900] 2 Ch. 254; Hermann Lechenstein & Co. [1907] 23 T. L. R. 424.
3. Greenwood & Co. [1900] 2 Q. B. 306; see also *in re* Gold Co. [1878] 11 Ch. D. 701; National &c. Generators [1902] 2 Ch. 34; Consolidated S. R. M. Deep [1909] 1 Ch. 491. 4. Sansar Chand v. Karam Chand [1925] L. 527, 6 Lah. 340.
5. Consolidated S. R. M. Deep (supra).
6. Hals. p. 416 and the cases collected there.
7. Varieties Ltd. [1893] 2 Ch. 235. 8. Gutta Percha Corpn. [1900] 2 Ch. 665.
9. Haycraft Gold Reduction Co. [1900] 2 Ch. 230; Teed & Bishop Ltd. [1900] 70 L. J. Ch. 409, 84 L. T. 561; State of Wyoming Syndicate [1901] 2 Ch. 431.
10. National Co. [1902] 2 Ch. 34; see also Jubilee Sites Syndicate [1899] 2 Ch. 204.
11. Consolidated S. R. M. Deep (supra).
12. Medical Battery Co. [1894] 1 Ch. 444.

Whether a company should be allowed to go into voluntary liquidation or a compulsory one depends upon the facts of each particular case [3]. Where it was stated that while the vast majority of the depositors of a bank were from places outside Karachi, but the vast majority of loans were made to persons in Karachi and the documents put in made it clear that the majority of the creditors, particularly of the creditors from outside Karachi, preferred official liquidation, the Court ordered the bank to be compulsorily wound up [1].

After the petition for compulsory winding up by a creditor, a resolution for voluntary liquidation was passed by the directors who were the sole shareholders, and voluntary liquidators were appointed. The matter was almost compromised before the company Judge, but with a view to speedy payment of the debts the company Judge passed an order for compulsory winding up. The order was supported by a dissentient director. Pending appeal against the aforesaid order all the creditors were satisfied by the voluntary liquidators : *Held,* the order for compulsory winding up should be set aside and the fact that misfeasance proceedings were in progress against the appellant director by the dissentient director was no reason for maintaining the order for compulsory winding up [2].

In a voluntary winding up the order made by the registrar that a claim in respect of a judgment should not be admitted to proof does not estop the claimant from presenting a petition for compulsory winding up, if after the date of the order he ascertains facts which show that the transaction of the company ought to be investigated by the official liquidator [3].

Liquidator cannot contest order.

The liquidator appointed by the company in a voluntary winding up or that under supervision of the Court has no right to contest an order directing a compulsory winding up [4]. In case a voluntary winding up is succeeded by a compulsory order, the date of the winding up will be the date on which the petition is presented [5].

Power of Court to adopt proceedings of voluntary winding up.

220. Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

Date of commencement of winding up.

The making of a compulsory order does not render void the proceedings in the voluntary winding up [6], but the presentation of the petition for compulsory winding up is the date of the compulsory winding up [7]. For the purposes of preferential payments, however, the winding up dates from the resolution [8], but for the purposes of fraudulent preference the presentation of the petition corresponds to the act of bankruptcy [9].

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1. In re Jeth Singh [1930] S. 71, 119 I. C. 539 ; Sansar Chand v. Karam Chand (supra).
2. Ram Rakha Mal & Sons v. Surindar Singh [1941] L. 134, 43 P. L. R. 33—per Young C. J. & Sale J.
3. Inecto Ltd. [1922] 38 T. L. R. 797.
4. People's Bank of India v. Naraindas [1914] 26 I. C. 553.
5. Taurine Co. [1883] 25 Ch. D. 118.
6. Thomas v. Patent Lionite Co. [1881] 17 Ch. D. 250 ; Cleve v. Financial Corpn. [1874] 16 Eq. 363.
7. Taurine Co. (supra).
8. Havana Exploration Co. [1916] 1 Ch. 8.
9. Russel Hunting Record Co. [1910] 2 Ch. 78.

Winding up subject to supervision of Court.

Power to order winding up subject to supervision.

221. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

Valid resolution for winding up voluntarily is necessary.

The Court cannot order the voluntary winding up to be continued under supervision unless there is in existence a valid resolution for voluntary winding up[1]. Dalip Singh J. of the Lahore High Court has however held that an order passed under this section is not without jurisdiction merely by reason of the fact that the extraordinary resolution was conditional or that it was passed at a meeting convened within 14 days of the issue of the notice[2].

A supervision order can be made only where there is a valid winding up. Hence where a creditor challenges the voluntary winding up proceedings as being void, he cannot apply for a supervision order[3].

Contributory's and creditor's application.

A supervision order is not, as a rule, made on the application of a contributory unless the winding up resolution has been passed fraudulently, or creditors appear to support the petition[4]. But in an application by a creditor for a supervision order the Court will always be in favour of making the order[9]. The petitioning creditor is entitled to his costs as a first charge on the assets of the company subject to any prior lien[5]. A supervision order was however made on a shareholder's petition where the only reason for making it was that in a proposed sale of the company's assets the representatives of the new company were much the same persons as those who controlled the liquidation[6].

Who can apply.

A person who has merely a claim for unliquidated damages against a company cannot however petition either for a compulsory or a supervision order[7]. The question whether the debt of a creditor was incurred before or after the voluntary liquidation commenced seems to be immaterial[8].

Petition for compulsory order.

If a petition is presented for winding up under supervision the Court cannot make a compulsory order on the motion of a creditor[9]; and if an order is made for winding up under supervision a creditor cannot present a petition for compulsory winding up, but the official receiver may do so[10].

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[1] Teede & Bishop Ltd. [1901] 84 L. T. 561, 17 T. L. R. 282; Bridport Old Brewery Co. [1867] 2 Ch. App. 191.

[2] Bahri v. Mandal & Bahri Co. [1930] L. 731, 126 I. C. 74.

[3] Kameshwar v. Ambler Slate & Stone Co. [1936] P. 469, 162 I. C. 218; Caloric &c. Signals Co. [1885] 52 L. T. 846.

[4] Beaujolais Wine Co. [1868] 3 Ch. App. 15; *in re* Gold Co. [1878] 11 Ch. D. 701.

[5] Nabor Habi Tea Co. [1869] 3 B. L. R. Appendix 11.

[6] Donald v. Eglington Chemical Co. [1900] 2 F. 402 (Court of Sess.)

[7] Pen-y-Van Colliery Co. [1877] 6 Ch. D. 477; Milford Docks Co. [1883] 23 Ch. D. 292.

[8] Bank of South Australia [1895] 1 Ch. 578 C. A.

[9] Chepstow Bobbin Mills Co. [1887] 36 Ch. D. 563.

[10] Jubilee Sites Syndicate [1899] 2 Ch. 204.

It is not a matter of course to make a compulsory order; but it would be made where the official receiver after such an order would possess any power which the voluntary liquidator cannot exercise and which is necessary in order that there may be an efficient winding up in the interest of the creditors and the contributories, *e.g.*, where misfeasance proceedings are contemplated and a public examination is absolutely necessary in order to obtain a sufficient disclosure 1.

Who can appear. At the hearing of a petition for winding up under supervision the liquidator and not the company ought to appear 2.

Date of commencement. The date of the commencement of a voluntary winding up is not altered by a supervision order 3; but it is altered by a compulsory winding up order 4.

Ground of order. Personal misconduct of a voluntary liquidator is not in itself a ground for making a supervision order on a shareholder's petition 3. The remedy is to bring an action against the liquidator or to remove him 5.

S. 216. S. 216 enables a creditor to apply to the Court when necessary; so the principal reasons for making a supervision order appear to be (1) that the order stops actions 6 and (2) that it subjects the costs to taxation 5.

Costs. Where on a creditor's petition for winding up a company under supervision of the Court a notice was served on other creditors who wished to oppose it, but the creditors professed to support it instead and were not willing to bear the burden of the petition which the petitioning creditor was unwilling to proceed with and the Court dismissed the petition, it was held that the supporting creditors were not entitled to costs 7.

For cases of shareholders' petition and creditors' petition see Buckley, 10th ed. pp. 458-459.

Effect of petition for winding up subject to supervision.

222. A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

Stay of proceedings. As regards the Court's jurisdiction to stay suits and legal proceedings after presentation of the petition and after the winding up order see ss. 169 and 171 and the notes under those sections.

Court may have regard to wishes of creditors and contributories.

223. The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

As to how the Court should ascertain the wishes of the creditors or contributories see s. 239. Compare s. 174.

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1. Jubilee Sites Syndicate (supra).
2. Mont de Piete of England [1892] W. N. 166, 37 S. J. 48.
3. See Weston's case [1869] 4 Ch. App. 20.
4. Taurine Co. [1883] 25 Ch. D. 118 C. A.
5. Buckley, 10th ed. p. 456.
6. See ss. 169, 171, 222 & 225.
7. Mahomed Hasan v. Varadarajalu [1937] M. 96.

Power for Court to appoint or remove liquidators.

224. (1) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

Security.

If an additional liquidator is appointed by the Court, he will be required to give security 1.

Appointment of additional or new liquidator.

Where in an application for the appointment of an additional liquidator and for a supervision order objection was taken to the person suggested for the office on the grounds, (1) that his firm acted as creditors of the company and (2) that the existing liquidator was also an interested party he being the managing director of the company, the Court superseded the appointment of the existing liquidator, confirmed the appointment of the person suggested and conjoined with him a person unconnected with the company 2. After the supervision order the shareholders can resolve on the appointment of a new liquidator and inform the Court of their wishes 3.

If a company, in passing a resolution for voluntary winding up, has omitted to appoint any liquidator, the Court may appoint one by the supervision order 4.

Removal of liquidator.

This section enables the Court to remove liquidators after the supervision order, while s. 213 empowers the Court to remove liquidators appointed by the company or the Court in a voluntary winding up.

Powers of liquidator.

In the winding up under supervision the liquidator has no power to bind the company by a new contract to pay the depositors an increased rate of interest 5. Where a suit has been brought for enforcing a call by a voluntary liquidator and dismissed, a subsequent application by a liquidator under supervision of the Court is barred 6.

Effect of supervision order.

225. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(2) Except as provided in sub-section (1), and save for the purposes of section 196, any order made by the Court for

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1. Hampshire Land Co. [1894] 2 Ch. 632.
2. Argylls Ltd. v. Ritchie & Whiteman [1914] S. C. 915.
3. London Quays & Warehouses Co. [1868] 3 Ch. App. 394.
4. Montrotier Asphalte Co. [1874] W. N. 172, 22 W. R. 895.
5. East of England Banking Co. [1869] 4 Ch. App. 14.
6. Saraswati Trading Corpn. [1928] A. 675, 111 I.C. 654.

a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

Staying of suits &c.

Where a company is being wound up by or subject to the supervision of the Court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company is, unless leave to proceed is given by the Court, avoided altogether, so that no interest in any goods seized is acquired, even as against third persons 1.

The Court will set aside a judgment obtained without leave after the making of the winding up order 2. The provision applies for distress 3.

Agreement for sale.

An agreement for sale of a company's property by the liquidator is *intra vires* 4, although the winding up be under supervision of the Court 5.

Restrictions.

As to the restrictions imposed by theCourt see the cases noted below 6. Restrictions will not be placed unless there be necessity for doing so 7.

Appeal.

It is provided by sub-s. (2) that the orders passed by the Court in winding up proceedings under the supervision of the Court stand for all purposes on the same footing as orders passed during such proceedings when the winding up is by the Court. Hence an appeal is competent from an order passed in winding up proceedings under supervision of Court 8.

Appointment in certain cases of voluntary liquidators to office of official liquidators.

226. Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last-mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court.

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1. Artistic Colour Printing Co. [1882] 21 Ch. D. 510 C. A.
2. Harford v. Amicable M. L. A. Co. [1871] 5 I. R. C. L. 368; see s. 171 and notes
3. Higginshaw Mills &c. Co. [1896] 2 Ch. 544 C. A.
4. Bank of South Australia No. 2 [1895] 1 Ch. 578 C.A.
5. Sankey Brook Coal Co. [1871] L.R. 12 Eq. 472.
6. London Quays &c. Co. [1868] 3 Ch. App. 394; Rochdale Property Co. [1879] 12 Ch. D. 775; Watson & Sons [1891] 2 Ch. 55.
7. Owen's Patent Wheel &c. Co. [1873] 29 L.T. 672.
8. Tabha Mal v. Jagraon Trading Syndicate [1935] L. 174, 158 I.C. 853.

Supplemental Provisions.

Avoidance of transfers, etc., after commencement of winding up.

227. (1) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up shall be void.

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

Scope.

The difference between this section and s. 57 of the Presidency Towns Insolvency Act III of 1909 is that while *bona fide* payments to creditors by an insolvent subject to the provisions of the latter Act are permissible and valid and may generally be quite proper, payments to creditors of debts previously incurred by a company from the moment of the presentation of the petition for winding up become improper alienations and void. For the purpose of the present section it is wholly immaterial whether the person making or receiving the payment had or did not have notice of the presentation of the petition for winding up, whereas it would be essential under s. 57 of the Presidency Towns Insolvency Act, for a person claiming the protection of that section to show that the transaction claimed to be valid was without notice of the presentation of any petition [1].

Date of commencement of winding up.

A winding up by the Court dates from the presentation of the petition [2] while a voluntary winding up or a winding up subject to the supervision of the Court dates from the passing of the resolution authorizing the winding up [3]. A special resolution was deemed to have been passed at the date when it was confirmed [4]. But confirmation is no longer necessary ; see the new sub-s. (2) of s. 81.

Transfer of shares.

Sub-s. (1). The execution of a transfer of shares without the sanction of the liquidator is void but not illegal [5], and an action may lie for refusal to execute a transfer although the sanction has not been obtained [6]. The liquidator has the power of sanction which involves the power to alter the register of members [7]. As to a transfer of shares to the liquidator see *Vining's case* [8]. Where successive transfers are sanctioned by the liquidator under this section, the ultimate transferee only is liable to contribute as a present member, the transferor and the prior transferees being liable as past members [9]. Where shares are pledged without the permission of the Court the transaction is void [10].

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[1] All India Home Relief Assurance Co. [1939] S. 196.
[2] S. 168.
[3] S. 204.
[4] Weston's case [1869] 4 Ch. App. 20.
[5] Rudge v. Bowman [1868] L. R. 3 Q. B. 689.
[6] Biederman v. Stone [1867] L. R. 2 C. P. 504.
[7] Cleve v. Financial Corpn. [1873] L. R. 16 Eq, 363.
[8] [1870] 6 Ch. App. 96.
[9] Taylor, Phillips & Rickard's case [1897] 1 Ch. 298 C. A.
[10] Union Indian Sugar Mills [1933] A. 607.

Where the contract was to deliver registered shares on a certain date, but the transferor could not deliver such shares on account of the company having gone into liquidation in the meantime, the promisee was entitled to get back the money paid to the promisor 1.

A transfer of shares after the commencement of the winding up made without previous sanction of the Court is not void. Complete discretion has been left to the Court to do whatever it may think just ; but an order that the transaction should stand would not ordinarily be made without good grounds 2.

Transfer of debentures.

The right to transfer debentures is not affected by the winding up 3. Where a debenture was issued by a company between the date of presentation of the petition for winding up and the date of the order for its compulsory winding up, it was held that notwithstanding the debenture-holder's knowledge of presentation of the petition, he was entitled to a declaration that the debenture was valid, that the costs of his successful application might well be regarded as mortgagor's costs and must therefore be added to his security and that the costs of the liquidator must be included in the costs of liquidation 4.

Alteration of status.

The words in the section forbidding alteration of status do not affect such transfers as are expressly authorized by the preceding words 5.

Transferor & transferee.

As between the transferor and the transferee the liability of one to the other is not affected by the Act 6 ; but the Court will not give effect to the transfer by ordering registration 7.

Forfeiture of shares.

Where a forfeiture has been validly made before the commencement of a voluntary winding up, the liquidator cannot under sub-s. (1) cancel the forfeiture 8. But the power of forfeiture may be exercised by the directors after the commencement of a voluntary winding up, if they obtain sanction of the liquidator or of a general meeting 9.

Sub-s. (2). Transactions made after the commencement of the winding up which a Court would validate under this sub-section are transactions *bona fide* entered into by a company for the benefit of the company and those interested in the assets of the company, for preserving the business of the company as a going concern and not to the detriment of other creditors 10. In the case of a winding up by or subject to the supervision of the Court every disposition of property of the company shall be void *unless the Court otherwise orders* 11. Although any disposition of the assets of the company

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1. Iredale v. General Securities Corpn. [1916] 33 T. L. R. 67 C. A.
2. Birchand v. John Bros. [1934] A. 161.
3. Farmer v. Goy & Co. [1900] 2 Ch. 149 ; cf. Rhodesia Goldfields [1910] 1 Ch. 239.
4. Park, Ward & Co. [1926] Ch. 828 ; see also Wiltshire Iron Co. [1868] 3 Ch. App. 443.
5. Taylor, Phillips & Rickard's case [1897] 1 Ch. 298 ; Massey's case [1907] 1 Ch. 582 ; Sussex Brick Co. [1904] 1 Ch. 598.
6. Rudge v. Bowman [1868] L. R. 3 Q. B. 689.
7. Onward Building Society [1891] 2 Q. B. 463.
8. Daw's case [1868] 6 Eq. 232.
9. Ladd's case [1893] 3 Ch. 450.
10. All India Home Relief Assurance Co. [1939] S. 196.
11. Sabapathy v. Sabapathy Press Co. [1930] M. 1012, 59 M. L. J. 826., 129 I.C. 40. The practice of the Court is to allow them if made honestly and in the ordinary course of business ; *ibid.* As to what is in the ordinary course of business and is *bona fide* see the next note.

after the winding up order is made and before the appointment of an official liquidator is not regular, as the property is then in the custody of the Court constructively, where the company has no creditor and the contributories in a meeting unanimously declare a dividend, the dividend so distributed will not be ordered to be repaid to the official liquidator, as the only persons interested in the assets are the contributories themselves 1. So where a lease was granted to certain persons pursuant to a resolution of a general meeting of shareholders after a petition for winding up presented by some of the shareholders had been dismissed, but on appeal the company was ordered to be wound up compulsorily, the Judicial Committee did not allow the official liquidator to impugn the lease, as the company had no creditors and the only persons interested were the shareholders who had by an unopposed resolution approved of the lease 2.

Where an insurance company makes payments between the commencement of the winding up and the date of the winding up order to some of its policy-holders in respect of their policies, the amounts of which have become due, such payments being payments of debts by the company to its creditors amount to disposition of property within the meaning of this sub-section and cannot be validated 3.

If the directors enter into a contract and make payments on it during the winding up proceedings, they do so at their peril. Excepting those cases in which it would be held that the payment was necessary for the winding up or for the carrying on of the business of the company pending the hearing of the winding up petition, the directors must be aware that there is always a risk of such payments being void under this section. In the sense that the directors are aware that they are making unauthorized payments, they are *disposing of the property of the company* wrongfully 4.

Sub-s. (2) intends to prevent any improper alienation and disposition of the property of a company *in extremis* during the period which must elapse before a winding up petition can be heard. Any *bona fide* transaction carried out and completed in the ordinary course of current business can however be sanctioned. This power is given for the benefit and interest of the company so as to ensure that a company which is made the subject of winding up petition may nevertheless obtain money necessary for carrying out its business and so avoid its working being paralysed ; but the Court will not allow the assets of the company to be disposed of at the mere pleasure of the company and thus cause the fundamental principles of equity among its creditors being violated 5.

Ordinary course of business.

There is a dividing line between what is the ordinary course of business bofore a winding up petition is presented, and what is the ordinary course afterwards. Before a petition is presented it is in the ordinary course of business for a company to pay all its debts and incidentally to give security to its bankers for any overdraft or loan it may arrange. But after petition is presented the situation is different. *Prima facie* all debts will have to be paid *pari passu*. Therefore it is no longer in the ordinary course of business to pay one creditor in full to the detriment of his fellow creditors 6. The transactions entered into by a creditor in

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1. Sabapathy v. Sabapathy Press Co., supra.
2. Ripon Press & Sugar Mill Co. v. Gopal Chetti [1932] P. C. 1, 36 C. W. N. 54 54 C. L. J. 439 ; Sabapathy v. Sabapathy Press Co. (supra).
3. All India Home Relief Assurance Co. (supra).
4. Peninsular Locomotive Co. v. Reed [1937] Pat. 293.
5. Tulsidas v. Industrial Bank [1931] B, 2, 54 Bom. 718, 32 Bom. L. R. 953, 12. I. C. 82 ; O.L. Gorakhpur Electric Supply Co. v. Siemens (India) Ltd. [1940] A. 514, [1940] All. 730, [1940] A.L.J. 739.
6. Tulsidas v. Industrial Bank, supra.

ignorance of the presentation of the petition would be rare but knowledge of the presentation of the petition, though an element to be considered, is not conclusive on the question of *bona fides* 1.

The payment made to a creditor on the basis of his decree after the presentation of the petition for winding up is not valid merely because he could have recovered the money before the date of presentation of the petition for winding up, if the company had not delayed execution 2. It is wrong to say that any creditor who can bring pressure to bear on the company should have preference over a creditor who cannot 2.

Debts of all descriptions to be proved.

228. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of insolvency) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or for some other reason do not bear a certain value.

Application of the section.

This section applies where the assets of the company are sufficient to pay all its debts and liabilities as well as the costs of liquidation. Where the company is insolvent the provisions of the next following section will apply. Every company in liquidation will be deemed to be insolvent until it is shown that the assets are sufficient for payment of the debts in full 3. The section is applicable to voluntary winding up also 4.

The expression "the law of insolvency" should be narrowed down to include only the "rule" as given in the next section. The Companies Act does not import all the provisions of the Provincial Insolvency Act and in particular s. 28 (2) of the latter Act 5.

All debts are provable.

Every kind of liability, however difficult of valuation, is provable unless declared by the Court to be incapable of being fairly valued 6, the object of the Act being to put all unsecured creditors upon an equality and to pay *pari passu* 7. A debt payable abroad in foreign currency is provable at the rate of exchange ruling on the date when the debt became due, and not at the rate ruling on the date of the winding up order, the correct date being the date of the breach and not the date of the winding up 8.

Right of set off.

The right of set off may be exercised in respect of claims arising before the winding up commenced, although not ascertained until afterwards 9, and unliquidated damages for breach of contract can be set off against a liquidated sum 10. The liquidator may disallow a proof in whole or in part if the company, as a matter of account, has a set off 11.

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1. Tulsidas v. Industrial Bank, supra.
2. O. L. Gorakhpur Electric Supply Co. v. Siemens (India) Ltd., supra.
3. Milan Tramways Co. [1884] 25 Ch. D. 587 at p. 591 per Lord Selborne L. C.
4. James Smith & Sons v. Goodman [1936] 1 Ch. 216.
5. Alliance Bank of Simla v. Feroz Shah [1936] Pesh. 57, 160 I. C. 908 dissenting from Hansraj v. Dehra Dun Mussooree E. Tramways Co. [1929] A. 353, 51 All. 696 F. B., 119 I. C. 273.
6. Hardy v. Fothergill [1888] 13 App. Cas. 351.
7. Per Lindley L. J. in *re* Oak Pits Colliery Co. [1882] 21 Ch. D. 322 at p. 329.
8. British A. C. Bank [1922] 2 Ch. 575.
9. Progress Assurance Co., *ex parte* Bates [1870] 39 L. J. Ch. 496.
10. Mersey Steel & Iron Co. v. Naylor, Benzon & Co. [1884] 9 App. Cas. 434.
11. National Wholemeal Bread &c. Co. [1892] 2 Ch. 457.

Insurance policies.

In the winding up of an insurance company which issues policies to employers to indemnify them against claims by their employees in respect of accidents, the policy-holders are entitled to prove in respect of (1) obligations presently incurred under the contract of insurance at the date of the winding up, (2) obligations presently incurred under the contract of insurance since the date of the winding up and (3) estimated loss incurred by the repudiation of the contract of insurance limited to the proportion of the premium unexhausted 1.

Actionable claims.

A contributory having bought up a debt of the company for less than what is actually due may, in the absence of fraud 2, prove for the full amount 3; but the case is otherwise if he stands in a fiduciary relation to the company 4.

Proof of debts.

A judgment would always be *prima facie* proof of a debt. It is only when there are circumstances casting doubts on the correctness of the debt, as proved by the judgment, that the judgment may be set apart and independent proof may be called for 5.

See notes to the next section.

Application of insolvency rules in winding up of insolvent companies.

229. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Scope.

This section does not incorporate in the Act the provisions of s. 49 of the Presidency Towns Insolvency Act III of 1909, and all questions regarding priority of debts in winding up proceedings are governed solely by the provisions of s. 230 *post*. Apart from the exceptions contained in that section the assets of the company must be applied in satisfaction of its liabilities *pari passu* 6.

Insolvency Acts in force.

In the Presidency towns of Calcutta, Madras and Bombay and in the town of Karachi the law of insolvency in force is the Presidency Towns Insolvency Act (Act III of 1909). In the rest of British India excepting the Scheduled Districts the Provincial Insolvency Act (Act V of 1920) applies. As regards the rules relating to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities, see ss. 46 to 50 of the Presidency Towns Insolvency Act and ss. 45 to 50 of the Provincial Insolvency Act.

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1. Law Car & General Insurance Corpn. [1912] W. N. 299, [1913] 2 Ch. 103.
2. Jones v. Gordon [1877] 2 App. Cas. 616.
3. Humber Iron Works [1869] 8 Eq. 122.
4. Imperial Land Co. [1876] 4 Ch. D. 566.
5. Union Indian Sugar Mills v. Brij Lal [1927] A. 426, 25 A.L.J. 450.
6. Northern Bengal Co. [1937] 41 C. W. N. 458.

How far applicable.

A Full Bench of the Allahabad High Court has held that the phrase "the same rules......under the law of insolvency" in this section is wide enough to include rules contained in the Provincial Insolvency Act, rules made under any power conferred by that Act and rules of practice, unless there is something in the Companies Act itself already providing for the matter in question, or in conflict with the rules which it is proposed to import [1]. But the Peshwar Court has held in a recent case that the above phrase should not be widened to include the whole of the law of insolvency as contained in the Insolvency Acts and in particular s. 28 (2) of the Provincial Insolvency Act [2]. This latter view is in accord with the decisions of English Courts (see below).

Where there are mutual dealings between an insolvent and a creditor, an account has to be taken of what is due from the one to the other in respect of such mutual dealings, and the balance of the accounts, and no more, has to be paid by one to the other. The law is not that the receiver-in-insolvency can recover the full amount due to the insolvent, leaving the creditor to take a *pro rata* dividend only. The above principle of s. 47 of the Provincial Insolvency Act and s. 47 of the Presidency Towns-Insolvency Act applies to companies in liquidation by virtue of the present section 229, the only exception being the case of a contributory who cannot set off the debt due to him or any dividend that may come to him afterwards against the calls [3].

English law.

In England it has been held that the corresponding section of the English Act does not import into the winding up the Bankruptcy rules relating to reputed ownership [4], requiring a petitioning creditor to surrender or value his security [5], restricting the rights of creditors under attachment of debts [6], giving a lessor a right to distrain for rent due before the winding up [7], depriving an execution creditor, where the sheriff has notice of a bankruptcy within fourteen days after sale, of the fruits of his execution [8], and the calculation of interest on debts for the purposes of the dividend [9]. Only the rules relating to the following are applicable *viz.*, (1) the respective rights of secured creditors *inter se* and unsecured creditors *inter se*; (2) the debts and liabilities provable; (3) valuation of annuities and future and contingent liabilities, and (4) mutual credit and set off [10]. But the phrase "with regard to the respective rights of secured and unsecured creditors and debts provable" is not wide enough to incorporate s. 60 of the English Bankruptcy Act, 1914, nor can the section possibly come within the words by reason of a referance to future and contingent liabilities in regard to which s. 60 can be fairly described as a rule relating thereto. S. 262 of the English Companies Act of 1929, corresponding to the present section, has been strictly construed and it has been held in numerous cases that the section does not introduce into a winding up bankruptcy rules in a number of matters [11]. For instance a winding up Court, unlike an insolvency

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1. Hansraj v. Dehra Dun Mussooree E. Tramways Co. [1929] A. 353 F. B., 51 All. 695, 119 I. C. 273.
2. Alliance Bank of Simla v. Feroz Shah [1936] Pesh. 57, 160 I. C. 908; Hansraj v. Dehra Dun Mussooree E. Tramways Co. [1929] A. 353 F. B., 51 All. 695, 119 I. C. 273.
3. Krishna Chandra v. Pabna Dhanabhandar Co. [1934] 39 C. W. N. 106 per R. C. Mitter J., Mukherjee A. C. J. concurring.
4. Gorringe v. Irwell &c. Works [1886] 34 Ch. D. 128.
5. Moor v. Anglo-Italian Bank [1879] 10 Ch. D. 681.
6. National U. I. Corporation [1901] 1 Ch. 950.
7. Coal Consumers' Association [1876] 4 Ch. D. 625.
8. *In re* Richards & Co. [1879] 11 Ch. D. 676.
9. Agricultural Wholesale Society [1929] 2 Ch. 261.
10. For cases see Gore-Browne, 36th ed. p. 549.
11. Health Promotion, Ltd. [1932] 1 Ch. 65—per Maugham J. at p. 69.

Court, cannot take cognizance of and adjudicate on the title of third persons except to the limited extent mentioned in ss. 231 and 232 ; and if it is necessary to impeach such title, the liquidator must have recourse to regular suits cognizable by ordinary Civil Courts 1.

Effect of Bankruptcy rules.

The effect of the introduction of the Bankruptcy rules is (1) to exclude from proof unliquidated damages for tort and (2) to prevent a secured creditor from proving for the full amount of his debt and subsequently realizing his security 2.

In winding up of an insolvent company all unsecured creditors are to be paid *pari passu* and the appropriate date for ascertaining their legal position is the date of the commencement of the winding up 3. The object of this is to prevent the injustice and scrambles and intrigues which would arise if the company was to be at liberty to prefer one creditor to another. An exception is made by s. 230 3.

Solvency and insolvency of companies.

A company in liquidation will be deemed to be insolvent until the contrary is shown 4. A company in liquidation becomes solvent as soon as it has paid off its liabilities existing at the date of the winding up order. When these liabilities have been discharged, creditors are entitled to subsequent interest when their debts carry interest 5. But interest in respect of debts which do not carry interest cannot be paid in a winding up 6.

Effect on contract.

The effect of a company going into liquidation while a contract entered into by the company before liquidation is subsisting is the same as when a party to a contract becomes bankrupt or insolvent. The bankruptcy or insolvency of a party may not alone necessarily result in such an incapacity to perform the contract as to entitle the other party at once to treat it as broken and to claim damages, because it may be for the benefit of the bankrupt or insolvent or of his estate to complete the contract and the representatives of his estate may be authorized to do so. The law does not require that the trustees in bankruptcy should give express notice, within a reasonable time after the date of the bankruptcy, of his adoption of the contract. The law only requires the trustee in bankruptcy to perform the bankrupt's part of it as and when he should have done it himself 7.

In a winding up the creditors should be allowed interest from the date of the winding up to the date of payment on the outstanding debts before the preferential shareholders can get anything. Where there has been a contract, interest at 6 per cent. per annum may be allowed, when the contractual interest is equal to or greater than the rate. In the absence of a contract for interest, a rate of 4 per cent. is proper 8. No proof is necessary for interest after commencement of the winding up.

Proof of interest.

The creditor, if his debt is one that bears interest, gets it if there is a surplus as incidental to his debt, irrespective of the question whether any mention of the interest was made in the order ajudicating upon his claim 9. In

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1. Hansraj v. Dehra Dun Mussooree E. Tramways Co. (supra) at p. 362 per Niamatulla J.
2. Gore-Browne, 36th ed. p. 550.
3. Tulsidas v. Industrial Bank [1931] B. 2, 54 Bom. 718, 32 Bom. L. R. 953, 127 I.C. 82.
4. Milan Tramways Co. [1884] 25 Ch. D. 587, 591.
5. Devi Ditta v. Amritsar Bank [1920] 56 I.C. 69 ; Ghanashamdas v. Public B. & I. Bank [1920] 56 I. C. 251.
6. Hertfordshire Banking Co. [1864] L.R. 4. Eq. 250.
7. Currimbhoy & Co. v. Creet [1930] C. 113, 57 Cal. 170, 50 C. L. J. 1208, 123 I.C. 250.
8. Dehra Dun Mussoorie E. Tramways Co. v. Dun Hardware Stores [1934] A. 189, [1934] A.L.J. 332, 147 I.C. 682.
9. Ghanashamdas v. Public B. & I. Bank (infra) ; Sabapathy v. Sabapathy Press Co. [1930] M. 1012, 59 M. L. J. 826, 129 I. C. 40.

the case of an insolvent company where the debt bears interest, it is provable only up to the commencement of the winding up[1], whether the winding up is voluntary or compulsory[2].

Where the company is insolvent nothing should be allowed for interest after the commencement of the winding up ; but the opposite rule applies where the company is solvent, that is, where there is a surplus. In such a case this section has no application and in whatever manner the dividends may originally have been made, if it turns out that there is an ultimate surplus, the account must be taken as between the company and the creditors in the ordinary way, that is, by applying each dividend in the first place to that payment of the interest due at the date of such dividend and the surplus to the reduction of the principal[3]. The company's solvency is established if, after payment of the principal and interest up to the date of the winding up, there are some assets sufficient to meet the liability on account of interest accruing after the commencement of the liquidation[4].

So long as a company is in voluntary liquidation, interest continues to accrue on debts carrying interest[5] ; but in the case of an insolvent company the bankruptcy rules apply and no claim can be sustained for interest subsequent to a judgment[2]. If a supervision order is made, the creditors cannot prove for interest accrued after the passing of the winding up resolution, unless there is a surplus remaining over after the other liabilites of the company have been discharged[6].

Secured creditor.

No secured creditor need, or can be forced to, prove his debt and such a creditor can stand wholly outside the winding up proceedings, if he so elects, and rely upon his security or his decree, if he nas obtained one, provided he has obtained leave to proceed from the winding up Judge[7]. A secured creditor need not prove at all but may rely on his security. He may bring an action to realize it without leave in a voluntary winding up, and with leave of the Court in a compulsory winding up or in a winding up under supervision[8]. Where the security is only a floating charge, certain unsecured debts are paid before those of the debenture holders[9] and before any other payment for carrying on the business[10]. The landlord is not a secured creditor in England[11] but he is so in Scotland[12].

In compulsory liquidation of an insolvent company a secured creditor after having exhausted his security cannot, in proving as regards the balance of his debt unsatisfied, include interest after the commencement of the winding up 1. A secured creditor in the case of a liquidation is on the same footing as in that of insolvency proceedings in respect of the unsecured portion of his debt 1.

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[1] W. W. Duncan & Co. [1905] 1 Ch. 307 ; Agricultural Wholesale Society [1929] 2 Ch. 261. See also Parent Trust & Financial Co. [1936] 155 L. T. 159.

[2] Thomas Salt & Co. [1908] 98 L. T. 558.

[3] Sabapathy v. Sabapathy Press Co. (supra) ; see also Humber Iron Works [1869] 4 Ch. App. 643 ; Esmail v. Chartered Bank [1931] R. 334, 9 Rang. 318, 133 I. C. 238.

[4] Ghanshamdas v. Public B. & Insurance Co. [1920] 1 Lah. 154, 56 I. C. 251 ; Devi Ditta v. Amritsar Bank [1920] 1 Lah. 368, 56 I.C. 69 ; Esmail v. Chartered Bank (supra).

[5] East of England Banking Co. [1868] 4 Ch. App. 14.

[6] Imperial Land Co. of Marseilles [1870] L. R. II Eq. 478.

[7] Hansraj v. Dehra Dum Mussoorie E. Tramways Co. [1929] A. 353 F. B., 51 All. 695, 119 I. C. 273.

[8] Longdendale Cotton & Spinning Co. [1878] 8 Ch. D. 150 ; Ramchand v. Bank of Upper India [1923] 74 I.C. 187.

[9] Legoniel Spinning Co. [1900] 1 Ir. R. 324.

[10] Woods v. Winskill [1913] W. N. 212, [1913] 2 Ch. 303.

[11] Thomas v. Patent Lionite Co. [1881] 17 Ch. D. 250.

[12] Wanzar Ltd. [1891] 1 Ch. 305.

S. company which had been financing P. company through one M. T. company for 7 years decided to have the property of P. company as security for debt owed really by M. T. company and obtained an equitable mortgage over P. company's property. The M. T. company which was putting up P.'s property as security held almost all the shares in P. company and the directors of the latter had for years been directors of M. T. company and these facts were known to the directors of S. company in course of their business. Winding up proceedings having been started in respect of P. company, S. company claimed to be a secured creditor of P. by virtue of the equitable mortgage. It is was held by the Privy Council under the circumstances that the official liquidator of the P. company was entitled to avoid the equitable mortgage 2.

Debenture-holders.

It is true that the debenture-holders are not bound by any thing done by the official liquidators, but they have no better claim than the company itself. They have a charge on the assets of the company, but what those assets are depends on the rights of the company 3. A company, which was not able to carry on its business owing to lack of necessary funds, entered into an agreement with S to the effect that S should supply a certain amount of cotton to the mills in order that they might spin it, that he was to pay spinning charges at certain rate and that he should advance money to the company to pay for their staff and for purchase of machinery and other necessary articles. It was provided that S should deduct from the funds advanced by him the spinning charges which he had to pay or in the alternative that he should deduct his advances from the spinning charges. The company went into liquidation : *held* S. was entitled to deduct the amount of his advances from the sum payable towards the spinning charges 4. The debenture-holders are entitled to have their debentures declared valid in the winding up proceedings, if the liquidator sought the instruction of the Court as to how those debentures should be ranked 5.

Remedies of a secured creditor.

When a company goes into liquidation, a secured creditor may realize his security and recover therefrom the whole of his principal as well as interest up to the date of realization, and not merely the amount due on the date of the winding up order. But if he realizes his security and has to prove for a balance, the remaining assets of the company would only be liable for such principal and interest as was due on the date of the winding up order. The hypothecated property is liable for the whole claim and it is only the liability of the remaining assets that is affected by the winding up order 6.

Charge.

Where a suit is brought by a plaintiff against a company alleging that he is entitled to a charge, the issue ought to be decided in the suit which should be allowed to proceed inspite of the winding up proceeding 7. Upon a

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1. London &c. Hotel Co. [1892] 1 Ch. 639 ; Oppenheimer v. M.E. Moolla & Sons [1930] R. 47, 7 Rang. 514, 120 I. C. 702.
2. T. R. Pratt (Bombay) Ltd. v. M. T. Ltd. [1938] P.C. 159, [1938] Bom. 421, 42 C. W.N. 733.
3. Mithan Lal v. Agra Spinning & Weaving Mills Co. [1940] A. 490, [1940] A. L. J. 626, 191 I.C. 458.
4. Ibit at p. 494.
5. Manmohan v. O. L. Lower Ganges &c. Co. [1940] A. 458, [1940] A. L. J. 449, [1940] All. 568.
6. Ramchand v. Bank of Upper India [1923] 74 I. C. 187.
7. Hukumchand v. Radhakissen [1925] C. 916, 29 C. W. N. 715.

winding up a debenture-holder is entitled to enforce his charge, even though his debenture has not matured 1.

If a creditor values his security, he cannot prove for more than the balance though the security realizes less than his valuation 2. If he wilfully omits to mention his security in his proof he will not generally be allowed to amend 3.

Execution creditors.

An execution creditor who has seized before commencement of the winding up is a secured creditor 5. He may realize his security 4. The same rule applies if the sheriff seeks to take possession and is resisted 5, or if the creditor was put off by some trickery 6. A solicitor who holds a lien on documents for his costs against the company is a secured creditor and must mention the lien in his proof 7. A creditor who has obtained the appointment of a receiver of land by way of equitable execution is also a secured creditor 8.

An attaching creditor is not a secured creditor within the meaning of this section, an attachment merely preventing and avoiding alienation 9. In this respect the Indian law differs from the English law 10. After referring to *Krishnaswami* v. *Official Assignee* 11, *Motilal* v. *Karrabuddin* 12 and *Peacock* v. *Madan Gopal* 13 where it was held that an attaching creditor does not obtain by his attachment any charge or lien upon the attached property, Marten C.J. in the case noted below 9 points out that "one reason for this difference between the Indian and English practice is said to lie in the English writ of *fiery facius* as compared with the prohibitory orders which are passed in India and the different forms of the writ of attachment delivered to the sheriff."

Landlord.

A landlord is not a secured creditor 14, except where s. 65 of the Bengal Tenancy Act is applicable; nor is a creditor who has obtained a garnishee order *nisi* before attaching a debt due to the company, but has not served it on the debtor before the winding up 15. But the attachment of a debt by the service of a garnishee order *nisi* before the presentation of the petition to wind up constitutes the garnishor a secured creditor 16.

Where fiduciary relation.

Where a fiduciary relation is established between the company and any other party, it is not necessary that the actual moneys paid over to a recipient and paid into his banking account must be traceable. It is sufficient if there is an equivalent sum. If the balance is less than the amount paid, the payer is entitled to look to the recipient up to the amount remaining in his

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1. Wallace v. Universal &c. Co. [1894] 2 Ch. 547 C. A.
2. Williams v. Hopkins [1881] 18 Ch. D. 370.
3. Safety Explosives [1904] 1 Ch. 226.
4. Printing & Numerical Registering Co. [1879] 8 Ch. D. 535, so far as not overruled by Withernsea Brick Works Co. [1881] 16 Ch. D. 337 ; cf. National U. Investment Corpn. [1901] 1 Ch. 950.
5. London Cotton Co. [1866] 2 Eq. 53.
6. Armorduct Co. v. General Incandescent Co. [1911] 2 K.B. 143.
7. Safety Explosives [1904] 1 Ch. 226.
8. Anglo-Italian Bank v. Davis [1879] 9 Ch. D. 275.
9. Goverdhandas v. Electro-Metal Refining Co. [1930] B. 16, 31 Bom. L. R. 1209, 122 I.C. 836.
10. Ibid, Printing & Numerical Registering Co. [1878] 8 Ch. D. 535.
11. [1903] 26 Mad. 673 F. B.
12. [1897] 25 Cal. 179 P. C.
13. [1902] 29 Cal. 429.
14. Thomas v. Patent Lionite Co. (supra) ; Coal Consumers' Assn (supra).
15. Stanhope Silkstone Collieries Co. [1879] 11 Ch. D. 160.
16. National U. I. Corporation [1901] 1 Ch. 950.

hands 1. So where a sum was deposited with a company as an anticipated earnest payment in respect of a contract which would come into existence but never did so, it was held that a fiduciary relation was established between the parties and that in view of this section read with s. 52 (1) (a) of the Presidency Towns Insolvency Act III of 1909 the party making the aforesaid deposit was entitled to the amount and that it was not divisible among the general body of creditors 2. When a customer delivers cheques to a bank for collection and the bank realizes the amount after it has suspended payment, the customer would be entitled, on the bank going into liquidation, to claim preferential payment in respect of the proceeds of the cheques over other creditors of the bank 3. A customer of a bank having a current account with it handed to the bank a sum of money for remitting it by telegraphic transfer to a company in Bombay. The bank did not do so as it suspended payment on the very day and liquidation proceeding were started later on. *Held* that the money was received by the bank in the capacity of a mere agent and was held apart by the bank as property of the customer who was therefore entitled to preferential payment in respect of the amount 4. For the case of a deposit which did not create a fiduciary relation see *Maheshwari Bros.* v. O. L. *Indra Sugar Works* 5.

Provident fund.

Where a provident fund is established by a company for the benefit of its employees and it is clear from the rules relating to the fund that it is held by the company for a specific purpose, the company being not entitled to operate on it except in the manner and conditions laid down by the rules, the relation between the bank and the employees in respect of the amounts standing to the credit of the latter is in the nature of a trust and is not one of debtor and creditor and the company holds the money of the fund in a fiduciary character. The fact that in certain contingencies, the employee may not be paid the amount or the company may have a beneficial interest in the said monies does not make the fund any the less a trust fund. Consequently in liquidation of the company by the combined operation of the present section and s. 52 of the Presidency Towns Insolvency Act, the said fund cannot be said to be part of the assets of the company. The employees of the company are therefore entitled to be paid in full the amounts standing to their credit in the provident fund account irrespective of the applicability of s. 230 (1) (e) *post* 6.

Security deposit.

Where an agent of a bank deposited a certain sum as security for the faithful discharge of his duties and agreed that the bank should receive and hold the money if not forfeited for losses occasioned through the agent's default upon his ceasing to be the bank's agent, it was however held that in liquidation proceedings the agent could only rank as an ordinary creditor and could not take preference over other creditors of the bank 7.

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1. Kodak Ltd. v. South India Film Corpn. [1938] M. 833, [1938] 1 M. L. J. 293; see also Official Assignee v. Abdul [1933] B. 437, 58 Bom. 67; Hallett's Estate [1880] 13 Ch. D. 696; Hallett & Co. [1894] 2 Q. B. 237; James Roscol Ltd. v. Wander [1915] 1 Ch. 62.
2. Kodak Ltd. v. South India Film Corpn. (supra); Hindusthan Commercial Bank [1938] M. 651, 178 I. C. 428.
3. All India Spinners Assn. v. O. L. Travancore National &c. Bank [1939] M. W. N. 1071.
4. New Field Co. v. O. L. Travancore National &c. Bank [1939] M. W. N. 1072.
5. [1938] All. 896, [1938] A. 574.
6. Venkataragnam v. O. L. Travancore National &c. Bank [1939] M. 352.
7. G. K. Malvankar v. Credit Bank of India [1915] 27 I. C. 343. But now see s. 282B.

In the case of a going bank it is entitled to treat a security deposit as ear-marked for a particular purpose and refuse to deal with it for any other purpose ; but in liquidation of an insolvent bank, if the occasion for realizing the security has not arisen and if the money has, with the consent of the giver of the security, been received by the bank and mixed with its funds in consideration of an agreement to pay interest on it, the bank is only a debtor and not a trustee 1.

Costs.

Although a liquidator has made a payment taking a receipt purporting to be in full discharge of the claim, the creditor will not be precluded from claiming and recovering any further amount due, *e. g.*, interest, unless there has been a *bona fide* compromise of a disputed claim 2. A creditor residing out of the Court's jurisdiction and seeking to prove may be ordered to give security for costs 3. The assets out of which costs, whether payable to an outside litigant or as the winding up costs, are payable, are those which are left after satisfying the claims of the secured creditors 4.

In the under-noted case where the costs of the winding up petition were taxed and paid out of the assets on the basis that the company was insolvent, but the company was ultimately found to be solvent, the solicitor was allowed to prove for the balance of his bill of costs, being solicitor and client costs, incurred upon the instructions of the company and its directors in opposing the petition 5.

Damages in tort.

If the damages in tort have been liquidated by agreement or by judgment actually signed before commencement of the winding up 6, they may be proved 7. A judgment obtained after commencement of a voluntary winding up, but before the compulsory order in the same case, may be recovered 8. Where the applicant recovered judgment for damages and costs against a company for personal injuries caused to him by the negligence of one of its servants and before execution could be levied the company went into liquidation, and the insurance company, with which the company in liquidation was insured against third party risks, paid the amount of the damages and costs to the liquidator, it was held that the applicant had no right at law or in equity, either as against the insurance company or as against the liquidator, to require that the money so paid should be handed over to him, but that the money formed part of the company's assets available for distribution among its general creditors including the applicant 9.

Where a paying passenger on a tramcar suffered serious injuries owing to the tramcar getting out of control and on winding up the tramway company rejected the proof of his claim for damages on the ground that it was a claim for unliquidated damages arising otherwise than by reason of a contract, it was held that as the proof was based on a contract to carry the applicant safely on the journey by the tramway company, the proof must be allowed and there must be an enquiry as to the damages 10.

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1. G. K. Malvankar v. Credit Bank of India, supra.
2. W. W. Duncan & Co. [1905] 1 Ch. 307.
3. Pretoria P. Ry. Co. No. 2 [1904] 2 Ch. 359.
4. Re Massey [1870] L. R. 9 Eq. 367.
5. C. B. M. (Tailors) Ltd. [1932] 1 Ch. 17.
6. *Re* Newman, *ex p.* Brooke [1876] 3 Ch. D. 494.
7. *Ex p.* Mumford [1808] 15 Ves. 289.
8. Inecto Ltd. [1922] 38 T. L. R. 797.
9. Harrington Motor Co. [1928] 1 Ch. 105 C. A, ; see also Liverpool M. Insurance Co. [1914] 2 Ch. 617, 633, 639.
10. Great Orme Tramways Co. [1934] 50 T. L. R. 450.

Judgment can be re-opened.

The Court can go behind and re-open a judgment obtained before the liquidation, if there was no consideration or a bad consideration for a debt, particularly if the judgment was obtained by default or consent 1. No doubt where there has been a genuine contest between a claimant and a company which subsequently goes into liquidation and the parties have fought out the case *bona fide*, it should not be open to the official liquidator to re-open the case or go behind the judgment and to look into the consideration for the same; but where a decree rests on something less than a real trial on the merits of the case or there are circumstances justifying the official liquidator to doubt the *bona fides* of the judgment or to suspect a miscarriage of justice, it would be open to the official liquidator to reject the decree and call for fresh proof of the claim 2. Where therefore a company was assessed on an estimated income and after its winding up it was found that the company had not made any profit during the year, but suffered loss, the Income-tax officer could not claim his assessment as binding on the liquidator and the official liquidator could call for its proof 2. The last cited case has however been dissented from in the same Chief Court in *Dinshaw & Co. v. Income-tax Officer, Lucknow* 3, where it has been held that a judgment debt and an assessment for taxes do not stand on the same footing. The reason for allowing the Court to go behind the judgment in insolvency proceedings to see if there is a real debt is to prevent fraudulent judgments. This is not the case with assessment for taxes. Hence where a company has been assessed under s. 23 (4), Income Tax Act, 1922 on the basis of the estimated income of the previous year and the order of assessment is not appealed against, the assessment becomes final and cannot be challenged and re-opened in liquidation proceedings 3. "It is well settled that the Court can inquire into the consideration for a judgment debt.........If there be a judgment it is not necessary to show fraud or collusion. It is sufficient, in the language of Lord Esher, to show miscarriage of justice, that is to say, that for some good reason there ought not to have been a judgment" 4.

Where judgment is obtained on the confession of the insolvent, it is open to the liquidator to set apart the decree and ask for proof of the claim 5. Lord Justice James observed in *exp. Kibble* 6: "It is settled rule of the Court of Bankruptcy on which we have always acted, that the Court of Bankruptcy can enquire into the consideration for a judgment debt." No judgment recovered against the bankrupt, no covenant for payment given by or account stated with him, can deprive the trustee in bankruptcy of his right and duty to investigate the nature and grounds of the claim made against the bankrupt's estate; the trustee is therefore entitled to go behind these forms and require satisfactory evidence that the debt is a real debt 7.

Mortgage.

Similarly the Court can examine the consideration for which a mortgage was given, and if not good, can set aside the mortgage 8.

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1. Great N. W. Ry. v. Charlebois [1899] A. C. 114, P. C.
2. Income Tax Officer v. Lucknow Sugar Works [1935] O. 451, 256 I. C. 708.
3. [1941] O. 260, [1941] O. W. N. 118, 192 I. C. 856 relying on In re Calvert [1899] 2 Q. B. 145.
4. Re Van Laun, *ex p.* Chatterton [1907] 2 K. B. 23.
5. Union Indian Sugar Mills v. Brij Lal [1927] A. 426, 25 A. L. J. 450.
6. [1875] 10 Ch. App. 373; see also the observation of Buckley L. J. in *ex p.* Chatterton [1907] 2 K. B. 23 at p. 31.
7. Re Van Laun, *ex p.* Chatterton [1907] 2 K.B. 23. See also Re Fraser [1892] 2 Q. B. 633; *ex p.* Lennox [1885] 16 Q. B. D. 315.
8. Ex *p.* Chatterton (supra).

Limitation. The statutes of limitation cease to run against a creditor on a winding up order being made, and he is allowed to prove at any time before the company is dissolved, but so as not to interfere with the dividends already paid [1]. A proof in respect of claims statute-barred before the order will not however be allowed [2].

Proving debt. If a person fails to prove a debt, he is not excluded generally, but may prove at any time before dissolution and can obtain payment out of any fund that remains undistributed [3]. The liquidator should send notices to those creditors of whose debts he has any knowledge [4].

Proof in substitution. Where a creditor, who has proved his debt, subsequently assigns it and then withdraws his proof, the assignee will be entitled to file a proof in substitution [5].

Mutual credit and set off. In the case of insolvent companies the bankruptcy rules as to mutual credit and set off apply. This is a wider right than that given by the common law rules of set off, *e.g.*, a claim for unliquidated damages for breach of contract can be set off against a debt [6]. The only condition is that there must be mutuality [7]. There is however a distinction between the right of set off which the official liquidator has under the mutual credit clause of the Insolvency Act and the right of set off which a defendant in a suit governed by the Civil Procedure Code exercises under O. 8. r. 6. Under that Code it is required as a condition precedent to a set off that the money should be "legally recoverable" by the defendant from the plaintiff, whereas the set off which the official liquidator exercises has no such condition precedent. The official liquidator can appropriate so much of the sum that the depositor owes to the company in satisfaction of what the company owes to the depositor, even though the company's claim is not legally recoverable by lapse of time [8]. A debt, although not presently payable, can be set off against moneys owing to a company in liquidation [9]. A joint debt cannot however be set off against a several debt [10]. But if it could be shown that though the joint account is in the names of A and B, A is solely entitled to the amount, a set off has always been allowed [11]. Where a secured creditor has a balance in hand after realization of his security, that may be set off against an unsecured debt due to him from the company [12]. Where at the time of insolvency, no debt is due from the company, there is no right to set off [13]. If an insolvent company is a creditor of and also a contributory liable for calls in another company, there is no set off [14].

In the case of an insolvent company where there are mutual debts and credits or

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1. General Rolling Stock Co. [1872] 7 Ch. App. 646.
2. Mitchell's Claim [1871] 6 Ch. App. 822; Fleetwood &c.. Syndicate [1915] 1 Ch. 486.
3. Hicks v. May [1880] 13 Ch. D. 236; Kit Hill Tunnel [1881] 16 Ch. D. 590.
4. Pulsford v. Devenish [1903] 2 Ch. 625.
5. Globe Trust Ltd. [1916] W. N. 100.
6. Mersey Steel & Iron Co. v. Naylor Benzon & Co. [1884] 9 App. Cas. 434.
7. Palmer v. Day & Sons [1895] 2 Q. B. 618.
8. Thakur Prasad v. O. L. Benares Bank [1941] A. 278.
9. Anantaraman v. Pirrie & Gill [1940] M. 157, [1940] M. W. N. 1096, 50 M. L. W. 759.
10. Kent County Gas Light Co. [1913] 1 Ch. 92.
11. Travancore N. & Q. Bank [1940] 1 M. L. J. 115.
12. H. E. Thorne & Son Ltd. [1914] W. N. 336, [1914] 2 Ch. 438.
13. Peruvian Ry. Construction Co. [1915] 2 Ch. 442.
14. National Benefit Assurance Co. [1924] 2 Ch. 339.

mutual dealings between the company and any other person, an account, as in bankruptcy, is to be made out and the balance only proved for. But this rule only applies where the cross-claims are "commensurable" 1. A pension paid voluntarily by the company cannot be proved 2.

Under Insolvency Acts.

This section makes the provisions of s. 30 of the Provincial Insolvency Act applicable to a case where the amount sought to be set off by the debtor belongs to a joint account with another which account is in credit 3. It has however been observed in a recent case that the privileges and rights which are given in s. 46, Provincial Insolvency Act are based upon equity and fair dealing. It is recognized that it would be very harsh that if the official assignee or the official liquidator could demand in full money due by a debtor and at the same time that person being a creditor for an equal or a larger sum of the company, must be content with a dividend dependent on the distribution which can be made from the assets 4. S. 52 of the Presidency Towns Insolvency Act does not apply to cases of floating charges created before the liquidation 5.

In case of surety.

A debtor, who has a cross-claim which he can set off against the company, does not lose that right because the company has obtained a safeguard by the surety assuring to the company the amount of the debt of the debtor to the company, there being moneys which can be set off. This right is not lost when a surety is obtained in respect of the debtor's debt to the company 6. Where a surety, whose obligation is to pay to the company the debts of another person, himself has money owing to him by the company in a separate dealing or transaction, the money due to the surety on the one hand and from him to the company on the other are mutual dealings as contemplated by s. 46 of the Provincial Insolvency Act, and he has the right to set off against his indebtedness to the company the moneys due to him when the obligation to the company by the debtor and the surety is joint and several 6. Where both the debtor to the company and his surety are themselves creditors of the company, they may set off one debt against the other 6.

Life assurance companies.

In the winding up of a life assurance company where there are contractual obligations at the date of the winding up the breach of which might give rise to a claim for damages, the claim is provable in the winding up and the policy-holder is entitled to set off the value of his policy against his debt 7.

Preferential payments.

230. (1) In a winding up there shall be paid in priority to all other debts—

(*a*) all revenue, taxes, cesses and rates, whether payable to the Crown or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date ;

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1. Auriferous Properties [1898] 1 Ch. 691 ; Leeds v. Hanley Theatres [1904] 2 Ch. 45.
2. Birkbeck P. B. B. Society [1913] W. N. 57, [1913] 1 Ch. 400.
3. Alliance Bank of Simla v. Mohan Lal [1927] L. 228, 8. Lah. 105.
4. Sundaravaradan v. Narasimhachari [1940] M. 266.
5. Re Imperial Bank of India [1925] M. 271, 85 I. C. 626.
6. Sundaravaradan v. Narasimhachari [1940] M. 266.
7. National Benefit Assurance Co. [1924] 2 Ch. 339.

(*b*) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant ;*

(*c*) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered by the company within the two months next before the said date ;

(*d*) *compensation payable under the Workmen's Compensation Act, 1923, in respect of the death or disablement of any officer or employee of the company* ;

(*e*) *all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company; and*

(*f*) *the expenses of any investigation held in pursuance of clause (iv) of section 138 of this Act.*

(2) The foregoing debts shall—

(*a*) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion ; and

(*b*) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof :

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date hereinbefore in this section referred to is—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order ; and

(*b*) in any other case, the date of the commencement of the winding up.

Amendment.

By the Companies (Amendment) Act, 1936, the word "and" at the end of cl. (b) of sub-s. (1) of this section has been omitted and after cl. (c) the new clauses (d), (e) and (f) have been inserted. For the effect of the amendments see Introduction.

Prerogative right of the Crown.

Sub. (1), cl (*a*). The prerogative right of the Crown in the winding up to payment of its debts in priority to all other creditors is inconsistent with and was abrogated by ss. 186, 207 and 209 of the English Act of 1908 (corresponding to ss. 207, 229 and 230 respectively of the present Indian Act) which negatived the prerogative by giving certain specified debts priority over all other including the Crown debts[1]. The Crown cannot claim even the narrower prerogative right to take the assets of the company by writ of extent or otherwise to the exclusion of all other claims and apart altogether from winding up, for that also is inconsistent with the provisions of the above sections[1].

Where the legislature has dealt with the powers under the prerogative, the prerogative must be taken to have been merged in the statute, and the powers previously within the prerogative can be exercised only in the manner and subject to the limitations contained in the statute[2]. But it has been held by Lort Williams J. that the priority exercised regarding Crown debts by reason of the Royal prerogative is limited to those arising out of revenue and taxation and does not extend to trading activities. The priority of Crown debts in winding up is limited to those specially mentioned in this section[3]. The Lahore High Court has held that where there is a conflict between the Companies Act and the Insolvency Act, the provisions of the former must be given effect to. It is the intention of the legislature to confine the decisions of all questions of priority to the present section which was enacted to deal specially with the same questions as were dealt in s. 61 of the Provincial Insolvency Act, 1920[4].

The priority of payment of all Crown debts which prevails in insolvency under s. 49 of the Presidency Towns Insolvency Act obtains equally in the winding up by reason of s. 229, and the priority is not confined to the debts mentioned in the section[2]. See s. 232 (2) and notes thereto.

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[1] H.J. Webb & Co. [1921] 2 Ch. 276, affirmed *sub nom.* Food Controller v. Cork [1923] A.C. 647, followed in Damagoria Coal Co. [1932] C. 430, 59 Cal. 397, in which Henley & Co. [1878] 9 Ch. D. 469, and Oriental Bank Corpn. [1884] 28 Ch. D. 643 were not followed. The Patna High Court has also in Bank of Bihar v. Secretary of State (infra) has taken the same view as the Calcutta High Court.

[2] Motor Emporium Co. v. Moos [1927] B. 606, 29 Bom. L. R. 1446 ; see also De Keyser's Royal Hotel [1919] 2 Ch. 197, and Bank of Bihar v. Secretary of State [1932] P. 1.

[3] Northern Bengal Co. [1937] 41 C. W. N. 458.

[4] Secretary of State v. Punjab Industrial Bank [1931] L. 351, 12 Lah. 678, 134 I. C. 200.

Revenue.

If this section had read "all taxes, cesses, rates and other revenue", the word "revenue" would have had to be read *ejusdem generis* with the preceding words. The word "revenue" means income ; hence the rent of the Government telephone lines and also the charge for trunk calls are within its meaning [1].

Rates.

The duty cast by s. 129 and this section upon a receiver appointed by debenture-holders of a company to pay rates then due from the company applies to a subsequent increase in those rates resulting from an appeal being allowed against the derating of part of the company's premises [2].

As to what are rates see the cases noted below [3].

Who is a clerk or servant.

Cl. (*b*). A secretary may be a clerk or servant so as to be entitled to the preferential payment in a winding up [4] ; but a secretary who does not give his whole time to the company or performs his duties by a deputy is not within the section [5].

Where the articles of association allow it, a director may hold any other office under the company and as such he may be a "clerk or servant" and entitled to preferential payment [6]. But as a rule a director, even though a managing director, is not regarded to be in the employment of the company [7]. Where the employee is not a whole time servant, but in the nature of a "contributor" to a periodical, he is not entitled to preferential payment [7].

Persons appointed to investigate the management of a company and to make a report is not a "clerk or servant" of the company [8]. A reporter in the employment of a newspaper company who does not work at the office, is not employed exclusively by the company, is not bound to render any general service and is not under the control of the company, is not a "servant" of the company so as to be entitled to preferential payment [9]. Under special contract a singer in opera has been held to be a servant [10]. A chemist employed at weekly wages to prepare formulae may be a servant [11]. Wages made up partly by fixed salary and partly by commission upon work done are wages [12].

Effect of winding up on contract of service.

If the winding up order is made before expiry of the term of the contract of service, the servant is entitled to his salary to the end of the period of his contract [13]. The order is notice of discharge of the servant [14], even in the case of a voluntary winding up [15]. The appointment by the Court of a receiver and manager in a debenture-holder's action has a similar effect [16].

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[1] Dehra Dun Mussorie E. Tramways Co. [1930] A. 884, [1933] A. L. J. 24.
[2] Airdale Garage Co. [1933] Ch. 64.
[3] Mannesman Tube Co. [1901] 2 Ch. 93 ; Kershaw, Leese & Co. v. Stockport Overseers [1923] 2 K. B. 129.
[4] Cairney v. Back [1906] 2 K. B. 746.
[5] Beeton & Co. [1913] 2 Ch. 279.
[6] Openshaw v. Fletcher [1916] 32 T. L. R. 372 C. A. But see the new s. 86E.
[7] Beeton & Co. (supra) ; Newspaper Proprietary Syndicate [1900] 2 Ch. 349 ; Normandy v. Ind, Coope & Co. [1908] 1 Ch. 84.
[8] Openshaw v. Fletcher (supra).
[9] Re Ashley & Smith Ltd. [1918] 2 Ch. 378.
[10] Winter German Opera [1907] 23 T. L. R. 662.
[11] G. H. Morison & Co. [1912] 106 L. T. 731.
[12] Earle's Shipbuilding Co. [1901] W. N. 78 ; *re* Klein [1906] W. N. 148, 22 T. L. R. 664.
[13] Seebsager Tea Co. [1867] 2 Ind. Jur. N. S. 257.
[14] General Rolling Stock Co. [1866] 1 Eq. 364.
[15] Reigate v. Union Manfg. Co. [1918] 1 K. B. 592, practically overruling Midland C. D. Bank v. Attwood [1905] 1 Ch. 357.
[16] Reid v. Explosives Co. [1887] 19 Q. B. D. 264, 57 L. T. 439.

Employees of foreign company.

Cl. (*e*). In a case where a foreign company is wound up in more jurisdictions than one, the law is that the Court of such jurisdiction will be governed by the forensic rules which govern the conduct of its own liquidation. This clause is a forensic rule. It should therefore be applied in the matter of winding up a foreign company which is wound up in British India under the provisions of this Act 1.

Application.

This clause would also apply to the case of a sum due to any employee from the provident fund amount maintained by the company who entered service before 15th January, 1937 (date of commencement of the amending Act XXII of 1936). It is sufficient if he is an employee of the company on the date of the winding up 1.

Floating charge.

Sub-s. (2), *cl.* (*b*). A floating charge operates as an immediate and continuing charge on the property charged subject only to the company's powers to deal with the property in the ordinary course of its business 2. A floating charge, unless otherwise agreed, leaves the company at liberty to create specific mortgages ranking in priority to the floating charge 3, and by dealing with debtors to give them a right of set off 4. A notice of the floating charge does not postpone subsequent mortgagees 5. As to what is a floating charge see notes to s. 109.

This section makes it quite clear that where there is a floating charge created by a debenture, the debenture-holder does not get priority over the debts contemplated in sub-s. (1) 6. So where a company creates a fixed charge by mortgaging its immovable properties and also gives the mortgagee a floating charge over its book-debts, this clause applies to the floating charge. Consequently the debts mentioned in sub.s. (1) of this section must be given priority and paid first out of the book-debts before the floating charge over the same can be enforced 6.

Wages of workmen.

Under this clause read with cl. (c) of sub-s. (1) the wages of workmen have a priority of claim over the claims of debenture-holders under any floating charge created by the company 7.

Personal liability of receivers.

If a receiver disposes of the assets without making provision for the preferential payments, he is personally liable 8, and moneys paid to a debenture-holder cannot be recovered to make the necessary payments 9.

Priorities.

These are the only priorities recognized in law and except the floating charges, referred to in s. 129, there is no priority over the claims of mortgagees or debenture-holders who are outside the liquidation 10. The priority is in respect only of assets subject to a floating charge 11.

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1. Venkataragnam v. O. L. Travancore National &c. Bank [1939] M. 352. See notes to s. 229 *ante*.
2. Foster v. Borax Co. [1901] 1 Ch. 326; Edward Nelson & Co. v. Faber & Co. [1903] 2 K. B. 367.
3. Govt. Stock &c. Co. v. Manila Rail Co. [1897] A. C. 81; Castell and Brown Ltd. [1898] 1 Ch. 315.
4. Edward Nelson & Co. v. Faber & Co. (supra).
5. Duck v. Tower Galvanising Co. [1901] 2 K. B. 314; London Pressed Hinge Co. [1905] 1 Ch. 576.
6. Parthasarathy v. Madras Publishing House, Ltd. [1941] M. 586, [1941] 1 M. L. J. 577, [1941] M. W. N. 444 relying on Lewis M. C. Collieries, infra.
7. John v. Suraj Bhan [1938] All. 869, [1938] A. 609.
8. Woods v. Winskill [1913] 2 Ch. 303.
9. Westminister Corporation v. Chapman [1916] 1 Ch. 161.
10. Richards v. Overseers of Kidderminister [1896] 2 Ch. 212.
11. Lewis M. C. Collieries [1929] 1 Ch. 498.

Costs and expenses.

Sub-s. (3). The effect of this sub-section is to make the costs and expenses of winding up payable out of the assets comprised in the floating charge before payment of the preferential debts ; but if the free assets are insufficient to pay the preferential debts, the balance must be paid out of the assets comprised in the floating charge 1.

Costs of unsuccessful litigation incurred by a liquidator, whether in a voluntary or a compulsory winding up, are payable out of the assets in priority to the costs of liquidation. This rule applies whether the order simply directs payment of costs, or directs that the costs be paid out of the assets of the company or that the liquidator do pay the costs with liberty to recoup himself out of the assets 2.

As to costs generally see notes to s. 193.

Date mentioned in sub-s. (1).

Sub-s. (5). The material date for the purpose of sub-s. (1) of this section is, in the case of a compulsory winding up which has been preceded by a voluntary winding up, the date of the commencement of the voluntary winding up, *i.e.*, when the resolution for the voluntary winding up was passed 3. Where a voluntary winding up is succeeded by a compulsory order, the two months for which a clerk or servant can claim preferential payment are the two months next before the resolution for the winding up 4. The section deals with the winding up as one continuous process which may be commenced as a voluntary and continued as a compulsory winding up, and there is nothing to show that persons who have acquired preferential rights under the voluntary winding up are to be deprived of them if a compulsory order is made 4. As to the date of the commencement of a winding up whether voluntary or continued under supervision of the Court see s. 204.

Disclaimer of property.

230A. (1) *Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts or of any other property that is unsaleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he had endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property :*

Provided that, where any such property has no. come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

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1. Westminister Corpn. v. Chapman [1916] 1 Ch. 161.
2. Pacific Coast Syndicate [1913] 2 Ch. 26.
3. Indian State Bank [1934] A. 114.
4. Havana Exploration Co. [1916] 1 Ch. 8.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

Provided that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any *person claiming under the company whether as under-lessee or as mortgagee except upon the terms of making that person—*

(*a*) *subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ; or*

(*b*) *if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ;*

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(*7*) *Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.*

Amendment.

This section has been introduced by the Companies (Amendment) Act, 1936. It is a reproduction of s. 267 of the English Act of 1929, which gives a liquidator power, corresponding to that of a trustee in bankruptcy, to disclaim land burdened with covenants, unprofitable contracts and property which is unsaleable.

Application must be heard.

The general law of insolvency applies to winding up of an insolvent company. A creditor in insolvency cannot in ordinary circumstances bring a suit against the official assignee. If he claims to be a creditor, he must file a proof of his debt with the official assignee. If his claim is rejected, then he has the right of asking the Judge sitting in insolvency to reverse the official assignee's decision. Consequently a customer of a bank putting in an application under this section, after an order for the compulsory winding up of the bank is passed, for rescinding a contract between himself and the bank and praying for damages, is entitled to have his application heard. If the Court then comes to the conclusion that the contract had already been rescinded, it would have no power to pass an order on the application, and the applicant would have to be relegated to the ordinary procedure provided by the Act for proving any debt in the winding up. The applicant cannot be relegated to the procedure of filing a suit unless he is heard [1].

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[1] Bhide v. Travancore N. &. Q. Bank [1941] M. 18, [1940] 2 M. L. J. 697, [1940] M. W. N. 1077.

Fraudulent preference.

231. (1) Any transfer, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an individual.

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

Fraudulent preference in insolvency.

Sub-s. (1). The law of fraudulent preference in the case of an individual in his insolvency is contained in s. 56 of the Presidency-Towns Insolvency Act III of 1909, and s. 54 of the Provincial Insolvency Act V of 1920. Both these sections say that (1) every transfer of property, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the official assignee (where the Presidency-Towns Insolvency Act applies) or the receiver (where the Provincial Insolvency Act applies) ; (2) the sections shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.

When the preference is fraudulent.

The preference is fraudulent when the substantial and dominant motive in the mind of the debtor (*i.e.*, the company acting as a rule by its directors) was to prefer one creditor or particular creditors 1. It is essential that the payment should have been made with a view to give preference to the creditors to whom it is made. It is not sufficient that the creditor was in fact preferred. In each case the question to be considered is what was the dominant motive in making the payment or transfer 2. The Court must look at the motive, not at the result 3. "Now when you are going," observed Hanworth, M. R., "to set aside some conveyance as transfer of property or charge as a fraudulent preference, I think, it is plain that there must be evidence given affirmatively, not merely that there was in fact a preference, but that the preference was given with a view or object or goal of preferring" 4. As to the application of the Bankruptcy rules in cases of fraudulent preference see *Trustee of Gonville* v. *Patent Caramel* Co. 5. To prove the motive or

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1. Sharp v. Jackson [1899] A.C. 419 ; Mohandas v. Tikamdas [1917] 37 I.C. 250.
2. Ex *p.* Taylor [1887] 18 Q.B.D. 295 ; M.I.G. Trust [1933] Ch. 542.
3. *Re* Stenotyper Ltd. [1901] 1 Ch. 250.
4. M.I.G. Trust [1933] 1 Ch. 542 at p. 563.
5. [1912] 1 K.B. 599 ; see also Jackson & Brassford Ltd. [1906] 2 Ch. 467.

intention evidence of other acts of preference in favour of other creditors committed at or about the same time is admissible 1. A debt although not presently payable can be set off against moneys owing to a company in liquidation. Such set off would not amount to a fraudulent preference 2.

Onus. In the case of an application for declaration that a particular transaction is a fraudulent preference, the onus is on those who claim to avoid the transaction to establish what the debtor really intended and that the real intention was to prefer. The onus is only discharged when the Court upon a review of all the circumstances is satisfied that the dominant intent to prefer is present 3. In this case the liquidator took out a summons for a declaration that by suffering a judicial proceeding to go by default (*i.e.*, by withdrawing opposition to an application by a creditor to extend time for registration of an equitable mortgage under the provisions of the Companies Act, at a time when the company was in fact insolvent) a fraudulent preference had been committed by the company ; but the House of Lords held that upon the material available the inference that the intent was to prefer could not in law be properly drawn 3.

Fraudulent preference cannot be inferred where a creditor has been pressing for his debt and payment is made to avoid the pressure 4. But payment from a sense of moral obligation, or the issue of debentures to a director who had guaranteed the company's overdraft, is a fraudulent preference and invalid 5. A morally irreproachable transaction may be a "fraudulent preference" 6.

An assignment made in pursuance of an earlier agreement is not a fraudulent preference 7. If the debtor really thinks that the creditor's case is one of hardship, the preference is essentially an undue one 8.

The issue of debentures to outsiders in satisfaction of existing debts is not necessarily a fraudulent preference 9. But where a director takes debentures to secure an amount due to him, or for which he is a surety, and postpones registration until within three months before the winding up, the issue is a fraudulent preference 10.

After citing a number of cases Clauson, J. said in the undernoted case 11 : "The result of these authorities appears to me to be that a transfer by a debtor of substantially the whole of his property, whether by way of charge or by way of sale, will be an act of bankruptcy, if the necessary consequence of the transfer will be to defeat or delay his creditors, and with these authorities to guide me, I feel no difficulty in holding that the substitution in place of a going business and substantial business assets of (*a*) shares in a private company which has taken over the debtor's assets and liabilities together with (*b*) a right of action by the debtor against that company on its covenant to discharge his liabilities must necessarily have the result of delaying the creditors and cannot be treated as providing something which the creditors can reach just as easily and satisfactorilly as the assets which have been transferred. The fact that it was in the contemplation of all parties that further finance should be secured by placing a prior charge on

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1. Re Ramsay [1913] 2 K.B. 80.
2. Anantaraman v. Pirrie & Gill [1940] M. 157, 50 M.L.W. 759.
3. Peat v. Gresham Trust Ltd. [1934] 151 L.T. 63, H.L.
4. Mohands v. Tikamdas (supra).
5. Buckley's case [1899] 2 Ch. 725 ; Jackson & Brassford Ltd. (supra).
6. Patrick & Lyon Ltd. [1933] 49 T.L.R. 372, per Maugham J.
7. Re Davies [1921] W.N. 259.
8. Buckley's case (supra).
9. Inns of Court Hotel Co. [1868] L.R. 6 Eq. 82 ; Seligman v. Prince & Co. [1895] 2 Ch. 617 C. A.
10. Jackson & Brassford Ltd. (supra).
11. *In re* Simms [1930] 2 Ch. 22 (34).

the transferred assets, certainly makes the position no better for those who seek to argue that the creditors will not be delayed."

In order to ascertain whether there has been "fraudulent preference" under this section it must be seen whether the act is done by free will and volition. The preference should be voluntary and not brought on by pressure. So where an assignment is made in favour of a particular creditor under the impression that unless he is paid the company will go into liquidation, there cannot be said to be an overriding intention to prefer and the preference cannot be said to be fraudulent preference within the statute 1.

Where it can or cannot be pleaded.

Fraudulent preference cannot be pleaded by a debtor in defence to a suit filed against him in order to avoid his own obligation and not for the benefit of the creditors generally. It can be pleaded, if at all, only in the Insolvency Court (note 4, last page). A set off within three months of a winding up is fraudulent preference 2.

S. 37, Provincial Insolvency Act.

The object of s. 37 of the Provincial Insolvency Act is to protect the interests of the whole body of creditors over whom an undue preference has been given in favour of other creditors. The same principle applies to a transaction which is sought to be impeached under this section, so that the disposition of a company's property cannot be impeached on the ground of fraudulent preference except on hehalf of the general body of the creditors. Therefore a person who is not a creditor of the company, but a debtor, cannot impeach a transfer made by the company, on the ground of undue preference 3.

The sale of an insolvent business to a private company for shares or debentures may be set aside as fraudulent 4, or may be treated as an act of bankruptcy 5.

Sub-s. (2). In the case of a winding up by or under supervision of the Court, the presentation of the petition for winding up, or the winding up resolution in the case of a voluntary winding up, corresponds to the act of bankruptcy of the individual. Every transfer &c., made within three months prior to the date of such petition or resolution will be deemed fraudulent 6.

Date of the act of insolvency.

Where a company which has gone into voluntary liquidation is ordered to be wound up by the Court, the date to which regard is to be had in ascertaining whether a fraudulent preference has been made is the date of the presentation of the petition, and not that of the extraordinary resolution 7. The date of the commencement of a winding up by the Court is the date of the presentation of the petition 8. A winding up continued under supervision of the Court dates from the resolution authorizing the winding up 9. But for the purpose of this section the date of the presentation of the petition is the material date. This is so in the case of a compulsory order, though there has been a previous voluntary winding up.

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1. Nabin Kishori v. Jagneshwar [1933] C. 809, 37 C. W. N. 909, 146 I. C. 502—per Mitter & Henderson JJ. ; see also Sime, Darby Co. v. Official Assignee [1928] P. C. 77, 47 C. L. J. 339, 107 I. C. 233.
2. Washington Diamond Mining Co. [1893] 3 Ch. 95 C.A.
3. Ram Sarup v. Jagat Ram [1921] 59 I. C. 977.
4. *Re* Goldburg [1912] I K. B. 606.
5. *Re* David & Johnson [1914] W. N. 104, 110 L. T. 942.
6. See B. P. Palmer Ltd. [1938] 1 Ch. 113.
7. Russel Hunting Record Co. [1910] 2 Ch. 78.
8. S. 168.
9. See notes under s. 204.

Sub-s. (3). A debenture by way of floating charge issued to a trustee for the benefit of all the company's creditors, is a conveyance and assignment within the meaning of this section if the value of the equity of redemption is merely nominal 1. An assignment by a company of all its property to a trustee for all its creditors is void 2.

Misfeasance.

Where any payment is void as a fraudulent preference of directors or other officers of the company, misfeasance proceedings under s. 235 may be taken to recover the amount paid 3. But there is no provision in the Act for a summary method of recovering money paid to a creditor by way of fraudulent preference 4.

Avoidance of certain attachments, executions, etc.

232. (1) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects *or any sale held without leave of the Court of any of the properties* of the company after the commencement of the winding up shall be void.

(2) Nothing in this section applies to proceedings by the [*Crown.*]

In sub-s. (1) the words in italics have been inserted by the Companies (Amendment) Act, 1936. In sub-s. (2) the word within square brackets has been substituted for the word "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

The effect of the amendment in sub-s. (1) is that not only attachment &c. but the sale of any of the properties of the company shall be void.

Date of commencement of the winding up.

Sub-s. (1). This section should be read with ss. 169 and 171 and is controlled by them 5. The date of the commencement of a winding up by the Court is the date of the presentation of the petition 6. A winding up continued under supervision of the Court dates from the resolution authorizing the winding up 7.

Stay of proceedings.

Upon a proper cause shown the Court having jurisdiction to wind up the company has power to make an order staying all proceedings against the company or the proceeding in the winding up 8. But where the company is not in liquidation, and a petition for winding up is not pending, the Court cannot, after ordinary meetings to be summoned and before approving the scheme of reconstruction, stay an execution on a judgment recovered before the order 9.

Sale after winding-up.

Where a company had gone into liquidation, a sale of its assets, after the winding up order, in execution of a decree passed before the date of that order without leave of the Court as provided in s. 171, was voidable at the instance of the liquidator, but would now be void. Want of knowledge of

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1. London &c. Bank v. H. Dickinson Ltd. [1922] W. N. 13.
2. Trustee of Gonville v. Patent Caramel Co. [1912] 1 K. B. 599.
3. Washington Diamond Mining Co. (supra).
4. Karachi Bank v. Castellino [1932] S. 106.
5. Exhall Mining Co. [1864] 4 De G. J. & T. 377 ; Lancashire Cotton Co. [1887] 35 Ch. D. 656 ; Higginshaw Mills [1896] 2 Ch. 544.
6. S. 168.
7. See notes under s. 204.
8. Currie v. Consolidated K. C. Corporation [1906] 1 K. B. 134.
9. Booth v. Walkden &c. Co. [1909] 2 K. B. 368. But now see the new sub-s. (5) of s. 153.

the winding up order does not validate such a sale[1]. But with the leave of the Court a distress or execution may be levied[2]. If the property was attached prior to the date of the application for winding up, the sale in continuation of the attachment was not invalid[3], but will be void now. Under this section the attachment &c. put in force without leave of the Court is void and not merely voidable.

See ss. 169, 171, 225 (2) and notes to those sections.

Applicability of the section.

This section is expressly limited to winding up either by the Court or subject to the supervision of the Court; so a voluntary liquidation cannot *ipso facto* have the effect of putting an end to an attachment already in force under a decree passed prior to the liquidation[4].

Sub-s. (2). This sub-section is not in the English Act. So Mr. Justice Page, while in the Calcutta High Court, held[5] that the effect of s. 171 is not to restrict any of the rights to recover debts due to the Crown which the Crown possesses in virtue of its prerogative. But the Patna High Court has held in a later case that it was not the intention of the legislature that the Court should be given discretion to permit proceedings which should have the effect of giving priority to any particular creditor, including the Crown, to which the latter is not otherwise entitled, this clause notwithstanding[6].

Effect of floating charge.

233. Where a company is being wound up a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

Object of the section.

The object of this section is to prevent insolvent companies from creating floating charges to secure past debts or for moneys which do not go to swell their assets and become available for creditors[7].

What is floating charge.

As to what is a "floating charge" see notes to s. 109. A floating charge is a present charge though it does not finally attach or crystalize upon any specific property until the happening of some event which puts an end to the right of the company to deal with the property in the course of the business[8]. It is not a future security but a present one affecting all the assets of the company expressed to be included in it. On the other hand it is not a specific security, the holder being unable to affirm that the assets are specifically mortgaged to him. The assets are mortgaged in such a way that the mortgagor can deal with them without the concurrence of the mortgagee 1. See notes to ss. 109 and 230 (2) (b).

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[1] Baldeo v. United Bank of India [1917] 2 Pat. L. J. 77, 38 I. C. 91.

[2] Exhall Mining Co. [1864] 4 De G. J. & T. 377 ; Lancashire Cotton Co. [1887] 35 Ch. D. 656 ; Higginshaw Mills [1896] 2 Ch. 544.

[3] Kayastha Trading Corpn. v. Satnarain [1921] 19 A. L. J. 262, 60 I. C. 763.

[4] National Bank of Upper India v. Sheo Mangal [1924] 79 I. C. 968.

[5] West Laikdih Coal Co. [1926] C. 781, 53 Cal. 328, 30 C. W. N. 541.

[6] Bank of Bihar v. Secretary of State [1932] P. 1 following Food Controller v. Cork [1923] A. C. 647.

[7] Orleans Motor Co. [1911] 2 Ch. 41.

[8] Imperial Bank v. Bengal National Bank [1931] C. 223, 58 Cal. 136, 34 C. W. N. 605. This case was reversed on appeal to the Privy Council [Imperial Bank v. Bengal National Bank (1931) P. C. 245, 58 I. A. 323, 35 C. W. N. 1034], but not on this point.

A floating security being only a charge on the assets for the time being, the company may, in the ordinary course of its business, unless it is otherwise agreed and until the security becomes fixed, sell, let, mortgage or otherwise deal with any of its assets and pay dividends out of the profits, just as if the floating charge has not been created 2.

Mortgage debentures usually contain a charge upon the undertaking of the company and all its property, real and personal, whether present or future, and may or may not give a charge upon uncalled capital. A specific charge is one that without more fastens on ascertained and definite property or property capable of being ascertained or defined ; whereas a floating charge is ambulatory and shifting in its nature, hovering over, and so to speak, floating with, the property which it is intended to affect, until some event occurs or some act is done, which causes it to settle and fasten on the subject of the charge within its reach and grasp 3.

Debenture containing floating security.

A debenture constituting a floating security over the undertaking and assets of a company does not specifically affect any particular assets until some event occurs or some act on the part of the mortgagee is done which causes the security to crystalize into a fixed security. A demand by the debenture-holder is not such an act, nor is a notice by him to the company's bankers claiming payment to him of the company's bank balance which has been attached by a judgment-creditor of the company under a garnishee order, for there is no equity in a debenture-holder, whose security is a floating charge, arising from his merely giving notice to seize a particular asset of the company 4.

Where floating charge is invalid.

Under this section a floating charge created within three months of winding up is invalid except to the amount of any cash paid at the time, unless the company's business is actually solvent at the time apart from the value of the fixed assets 5. Where there is a condition for payment of a sum at a time and place certain, the condition is not broken by non-payment at the time unless the demand for payment is made at the specified place 6.

Where moneys are advanced to secure the liability of a company under an antecedent independent guarantee, debentures giving a floating charge created by the company in favour of the guarantors who find money to pay off the debt owing to the company and guaranteed by them are, if the company goes into liquidation within three calendar months after the issue of the debentures, invalid unless it is proved that the company was solvent immediately after the creation of the charge 7. Where the debentures were issued to a bank to secure an existing loan account and a current account and the company went into liquidation within three months, the charge was held to be invalid as regards the loan account, although in the meantime various advances had been made and repaid on the current account 8.

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1. Bank of Baroda v. H. B. Shivdasani [1926] B. 427, 28 Bom. L. R. 689. See also the opinion of Buckley L. J. in Evans v. Rival Granite Quarries [1910] 2 K. B. 976, 999.
2. Hals. p. 349.
3. Illingworth v. Houldsworth [1904] A.C. 355.
4. Evans v. Rival Granite Quarries [1910] 2 K. B. 979.
5. Hodson v. Blanchard Ltd. [1911] 131 L. T. Jo. 9.
6. Thorn v. City Rice Mills [1889] 40 Ch. D. 357.
7. Orleans Motor Co. [1911] 2 Ch. 41.
8. Christy v. Hayman, Christy & Lilly Ltd. [1917] 1 Ch. 283.

Second floating charge.

Where a debenture trust-deed creating a general floating charge over all the undertaking and assets of the company, present and future, reserves power to the company in the ordinary course of its business to create specific charges over any of those assets, then although a second general floating charge over all the property comprised in the first charge but ranking *pari passu* with or in priority to that charge is under the general law incompatible with the first charge and ranks subject to it, yet there is no principle of law which forbids the creation of a second floating charge over part only of the assets ranking *pari passu* with or in priority to the earlier floating charge, so long as the latter floating charge is within the limits of the power reserved[1].

Meaning of "at the time of its creation."

A payment made on account in anticipation of creation of the charge and in reliance on a promise to execute it, although made some days before its execution, is made "at the time of its creation" within the meaning of this section[2].

Payment must be in cash.

The payment must be one in cash[3], otherwise it is not a good payment[4]. A debenture issued for a past debt is invalid when coming under the provisions of this section. Debentures, so far as given as security of the current account, are only valid to the extent of the amount owing by the company on that account at the date of the winding up[5]. But it is sufficient if in substance cash was paid[6]. In the last cited case the debenture was held not to have merely secured past debts but to have obtained for the company the advantage of being able to continue its business and Lord Hanworth M. R. pointed out: "The cases under this section must, each of them, depend upon their own facts. It is very difficult to lay down a precise test which shall bring a case within or without the section"[7].

Effect of the section.

The effect of this section is to invalidate a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up, unless it is proved that the company was solvent immediately after the charge was created, but it does not altogether avoid the debenture[8]. Therefore where such a debenture has been redeemed by payment to the holder before the date of the winding up petition, the liquidator is not entitled to recover back the money so paid, though he may be at liberty to apply to set aside the debenture as being a fraudulent preference of the creditors whose debts it was given to secure or on any other ground[8]. As to the case of fraudulent preference under such circumstances see *Columbian Fireproofing Co.*[9], and *F. & E. Stanton Ltd.*[10].

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[1] Automatic Bottle Makers Ltd. [1926] Ch. 412. See also Benjamin Cope & Sons [1914] 1 Ch. 800.

[2] Columbian Fireproofing Co. [1910] 1 Ch. 756, 2 Ch. 120; see also Olderfield Shipbuilding Co. [1922] 1 Ir. R. 26.

[3] Orleans Motor Co. (supra): see Gregory, Love & Co. [1916] 1 Ch. 203.

[4] W. G. McLeave & Co. [1911] 47 I. L. T. 214.

[5] Hayman, Christy & Lily Ltd. [1917] 1 Ch. 283.

[6] Mathew Ellis Ltd. [1933] 1 Ch. 458 C. A. In this case Orleans Motor Co. (supra) is distinguished and the dictum of Astbury J. in Hayman, Christy & Lily Ltd. (supra) at p. 285 to the effect that "except to the amount &c." means except to the amount of any cash absolutely and unconditionally paid to the company is disapproved.

[7] Ibid at p. 469.

[8] Parkes Garage Ltd. [1929] 1 Ch. 139.

[9] [1910] 1 Ch. 758.

[10] [1929] 1 Ch. 180.

General scheme of liquidation may be sanctioned.

234. (1) The liquidator may, with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case of a voluntary winding up, do the following things or any of them :

(*i*) pay any classes of creditors in full ;

(*ii*) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the company may be rendered liable ;

(*iii*) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers.

Court's discretion.

In this section the Court has been allowed a discretion to order payment in full to any class of creditors other than those referred to in s. 230 and when the discretion used by the Court is not capricious or in disregard of any legal principle, the High Court will be very slow to interfere with the exercise of the discretion 1.

Meaning of 'creditors.'

Sub-s. (1), cl. (i). No distinction is made between different kinds of creditors, the words "creditors" being general 2. Every person having a pecuniary claim against the company, whether actual or contingent, is a creditor. Secured creditors are included and also foreign and colonial creditors when their rights are in question 3. A creditor having a claim against the company for damages for breach of contract may be admitted as a creditor under this section as on the date of breach 4. The arrangement must be such as any man of business

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1. Peoples Bank of N. India v. Lucknow Sugar Works [1936] O. 338, 163 I. C. 194.
2. Empire Mining Co. [1890] 44 Ch. D. 402.
3. New Zealand Loan &c. Co. v. Morrison [1898] A. C. 349 P. C.
4. British A. C. Bank [1923] 1 Ch. 276 C. A., [1922] 2 Ch. 575.

would reasonably approve 1, and it should be fair and reasonable as regards the different classes, if any 2.

Compromise.

Sub-s. (1), cl. (ii). A power to compromise rights presupposes some dispute about them or difficulties in enforcing them 3. A compromise however is good if both parties *bona fide* believe that there is a question in dispute, although it may not really be doubtful 4.

Notice.

Where there are several classes of creditors and contributories and the scheme does not affect the rights of some particular class, it is not the practice nor is it necessary, to send notice of any meeting to the members of such class; the dissent of a class which is not interested may be disregarded 5. It is however necessary for different classes of those affected by the scheme to have separate meetings 1. As to what is meant by a class for the purpose see *Sovereign Assurance Co.* v. *Dodd* 6. Where there are matured and unmatured policy-holders of an insurance company, a dissentient holder of matured policy is not bound by a resolution passed at a meeting to which all the policy-holders are summoned 6.

Meaning of "class."

The Court will sanction only a bona fide scheme.

The Court will not sanction a scheme when the required majority is made up of persons not acting *bona fide* in the interest of the class to which they belong as where their votes are given to get rid of their liability for amounts unpaid on their shares 7. In the absence of any improper motive there is nothing to prevent a creditor, who is also a shareholder, from voting 8. If the first meeting be unsatisfactory, a second meeting may be called 9. The Court can sanction only a *bona fide* scheme 10.

What schemes may be sanctioned.

Schemes have been sanctioned containing the following provisions: that the first mortgage debenture-holders are to be postponed to other debentures or charges about to be issued or created; that debenture-holders and other creditors of the old company are to accept shares in the new company in satisfaction of their debts; that debentures, the interest on which is to be paid only out of the profits of the company, are to be taken in satisfaction of debentures the interest on which is payable whether profits are made or not 11.

Court may impose condition.

The Court may, and often does, impose conditions on its sanction to a scheme. Where the scheme proposes that a company in difficulties is to make over its assets to a new company, the sanction may be refused, unless the scheme provides that the new company will undertake to obey the order of the Court as to any proceedings which it may think it right to have taken against officers of the old company 12. In one case the order on the assignment of the undertaking to a new company provided that the rights of the official receiver and liquidator to take misfeasance proceedings against officers of the transferor company

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1. Alabama &c. Railway Co. [1891] 1 Ch. 213 C. A.
2. English, Scottish &c. Bank [1893] 3 Ch. 385.
3. Sneath v. Valley Gold Ltd. [1893] 1 Ch. 477 C. A.
4. Parry v. Liverpool Malt Co. [1900] 1 Q. B. 339.
5. Re Tea Corporation [1904] 1 Ch. 12 C. A.
6. [1892] 2 Q. B. 573 C. A.
7. Wedgwood Coal & Iron Co. [1877] 6 Ch. D. 627.
8. Madras Irrigation & Canal Co. [1881] W. N. 120, 172.
9. See notes to s. 153.
10. South Indian Mill Co. [1915] 30 I. C. 386.
11. For cases see Hals. p. 607.
12. Practice Notes [1894] W. N. 166.

should be preserved, and that the proceeds of any such proceeding should be held for the benefit of the shareholders of the transferor company[1]. In another case the Court gave its sanction on the undertaking of the liquidator to pay the unsecured creditors in full out of the assets in his hands, not to act upon the resolution as regarded underwriting, and to procure the cancellation of underwriting agreements, and provided that the shareholders who opposed should, if they elected within a prescribed time to dissent from the special resolution, be entitled to the rights of dissentient shareholders on an ordinary reconstruction[2]. A scheme once sanctioned by the Court is binding on all contributories[3].

Right of appeal.

Persons whose interests are affected by a scheme but who have not opposed it at a meeting or appeared at the hearing of the petition cannot appeal, without leave, from the order sanctioning the scheme[4].

Court's duty.

In an application under this section for sanction of a scheme the duty of the Court is not confined to ascertaining that all formalities have been complied with and to giving effect to the policy of the majority; but the Court must be satisfied that the proposals are not *ultra vires*, that they have been adopted in good faith and that they work no injustice to a dissentient minority. It is the duty of the Court to consider any criticisms that are made affecting the feasibility of the scheme, its fairness to all persons interested and its financial soundness. If alternative methods of dealing with the position are suggested, the Court will consider whether any of them may not be a more satisfactory solution[5]. The Court will not sanction a scheme merely because it has been approved by a large majority of the creditors. It will demand to be satisfied that the proposed arrangement is fair and equitable[6].

Reconstruction & reorganization.

Arrangements may be entered into for the purpose of reconstruction staying any pending winding up proceedings or distributing assets among creditors[7]. They may also involve the reduction or reorganization of the company's capital; but if so, the proceedings must comply with the other requirements of the Act[8].

Compromise.

The Court has no jurisdiction to compel a liquidator to consent to a compromise with a contributory or a creditor[9]. The compromise can only be made with the sanction of both the Court and the liquidator[9]. If a voluntary liquidator makes compromise of a claim by the company against a third party without obtaining the sanction of the company, the compromise is still binding on the company unless and until it is set aside[10]. A compromise under this section is binding only on those creditors who assent to it[11].

In the case of a winding up under supervision the voluntary liquidator may, unless the Court has otherwise directed, make a compromise without obtaining the Court's sanction[12]. Any creditor or contributory may appear either to support or to oppose an application for sanction of the Court. If the sanction is obtained by misrepresentation, it will be rescinded 1.

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[1] *Re* Olympia Ltd. [1900] 16 T. L. R. 564.
[2] Canning Jarrah Timber Co. [1900] 1 Ch. 708 C. A.
[3] Nicholl v. Everhardt Co. [1889] 61 L. T. 489 C. A.
[4] Securities Insurance Co. [1894] 2 Ch. 410 C. A.
[5] Buenos Aires P. & C. Tramway [1920] 89 L. J. Ch. 597. 123 L. T. 748.
[6] Empire Mining Co. [1890] 44 Ch. D. 402.
[7] Bessemer Steel & Ordnance Co. [1875] 1 Ch. D. 251.
[8] Cooper, Cooper & Johnson [1902] W. N. 199, 51 W. R. 314; Hoare & Co. [1910] W. N. 87.
[9] Pearson's case [1872] 7 Ch. App. 309; Hankey's case [1872] 26 L. T. 358.
[10] Cycle Makers' Co-operative Society v. Sims [1903] 1 K. B. 477.
[11] Albert Life Assurance Co. [1871] 6 Ch. App. 381.
[12] Wright's case [1870] 5 Ch. App. 437.

A general compromise of claims upon contributories as a class may be sanctioned 2, but not so as to be binding on an unwilling minority 3. A compromise with contributories on the A list does not release contributories on the B list 4, or affect the liability of other contributories on the A list 5.

Compromise between liquidator and company.

A compromise between a liquidator and a company is not binding upon the company until it is sanctioned by an extraordinary resolution of the company 6. But it has been held that a person entering into a compromise with a voluntary liquidator is not bound to see that the liquidator has got the necessary sanction. He is entitled to assume that the requisite authority has been obtained 7.

If a claim made against a company in voluntary liquidation is brought to the Court for adjudication under s. 215 (now s. 216), the liquidator cannot compromise without the Court's sanction 7.

General compromise.

The power to compromise extends to making a general compromise with creditors or contributories as a class, notwithstanding difference in position among them, and without enquiring closely into the means of each individual 8. A compromise entered into with a contributory on the A list does not discharge his transferor on the B list 9, and if the B contributory is called upon to pay, his transferee remains liable, notwithstanding the compromise, to indemnify him 10.

Whether an order to sanction a compromise be made under this section or s. 179, there must be such evidence before the Court as will enable it to exercise a judicial discretion in the matter 11.

As to appeal see s. 202 and notes.

Power of Court to assess damages against delinquent directors, etc.

235. (1) Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any

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1. Ex. p. Clarke [1866] 14 W. R. 856, 14 L. T. 789; Central Darjeeling Tea Co. [1866] W. N. 361, 15 L. T. 234.
2. Bank of Hindustan v. Eastern Financial Assn. [1869] L. R. 2 P. C. 489.
3. Albert Life Assurance Co. [1871] 6 Ch. App. 381.
4. Accidental Death Insurance Co. [1878] 7 Ch. D. 568.
5. Helbert v. Banner [1870] L. R. 5 H. L. 28.
6. Union Bank of India v. Gobind Sing [1924] L. 148, 77 I. C. 338.
7. Lama Coal Co. [1867] 2 Ch. App. 692.
8. Bank of Hindustan v. Eastern Financial Assn. (supra); Commercial Bank Corpn. [1869] 8 Eq. 241.
9. Nevill's case [1870] 6 Ch. App. 43; Hudson's case [1871] 12 Eq. 1; Helbert v. Banner [1870] L. R. 5 H. L. 28.
10. Roberts v. Crowe [1871] L. R. 7 C.P. 629, 27 L.T. 238.
11. South Eastern of Portugal Ry. Co. [1869] 20 L.T. 800, 21 L.T. 220.

creditor or contributory *made within three years from the date of the first appointment of a liquidator in the winding up or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer,* examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

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Amendment. By the Companies (Amendment) Act, 1936 in sub-s. (1) of this section the words in italics have been inserted, and sub-s. (3) has been omitted. See Introduction.

The sub-s. (3) was as follows :—

(3) The Indian Limitation Act, 1908, shall apply to an application under this section as if such application were a suit.

Limitation. There was a great conflict of decisions in different High Courts as to whether Arts. 36, 90, 115, 116 or 120 of the Limitation Act was applicable to an application under this section. This has been removed by the above amendment which provides a special limitation of three years from the date of the first appointment of a liquidator or of the misapplication, retainer, misfeasance or breach of trust whichever is longer. As the cases under the old sub-s. (3) have become obsolete they have been omitted.

This section creates no new or additional right or liability 1. The power of the Court is however restricted so as to prevent it from proceeding *suo motu* 2. An application under this section is a representative application filed on behalf of a class of persons and not to enforce any personal remedy or obtain any exclusive benefit 2.

Scope of section. Being a procedure section only, it provides a summary way of enforcing against directors or other officers a liability for breach of trust or other misconduct which previously might have been enforced by action 3. To bring a case within the section it is essential (1) that there has been a breach of trust, (2)

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1. Narasimha v. Official Assignee [1931] M. 58, 54 Mad. 153.
2. Shiam Lal v. Liquidator, U. P. Oil Mills Co. [1933] A. 789 (F.B.), [1933] A. L. J. 1203.
3. Coventry & Dixon's case [1880] 14 Ch. D. 660; Brazillian Rubber Estates [1911] 1 Ch. 425; Kumarpuram v. Pestonji [1903] 5 Bom. L. R. 633; Cavendish-Bentinck v. Fenn (infra); Irish Provident Assurance Co. [1913] 1 I. R. 352 C.A.; Bhim Sing v. Basheshwar [1927] L. 433, 8 Lah. 167; Bank of Multan v. Hukumchand [1923] L. 58; City Equitable Fire Insurance Co. [1925] Ch. 407, 40 T. L. R. 853; Govind v. Rangnath [1930] B. 572, 54 Bom. 226, 32 Bom. L. R. 232; but see Union Bank, Allahabad [1925] A. 519, 47 All. 669, 23 A. L. J. 473; Sri Ram v. Nur Muhammad [1925] L. 194, 5 Lah. 461, 85 I. C. 126.

that the breach has resulted in pecuniary loss to the company and (3) that the applicant has an interest in the result of the application[1]. Orders in a misfeasance proceeding under this section do not bar a suit against a third person whose wrongful act has caused loss to the company, for such proceedings are domestic proceedings between the company and its officers and the orders are passed in a special jurisdiction investing the Court with certain powers over the internal affairs of the company[2]. But where such proceedings have been taken against a director or other person mentioned in this section, subsequent suit against him for compensation for fraud or misfeasance is incompetent on the principle of *res judicata*[3].

This section contemplates a loss to the company before an order for delivery of the books of the company can be passed under it[4].

The section is not in terms meant to be applied for the purpose of enforcing claims due under contracts between the company and other persons, whether such persons happen to be directors or not. Therefore the section cannot be invoked for the purpose of enforcing payment for arrears of rent due by a director to the company[5]. It does not extend to all cases in which a company has a right of action against an officer, but is limited to cases where there has been something in the nature of a breach of duty by an officer as such which has caused pecuniary loss to the company[6]. "It has been settled that the misfeasance spoken of in that section is not misfeasance in the abstract, but misfeasance in the nature of a breach of trust resulting in a loss to the company[7]." It covers every misconduct by an officer of the company as such for which he might, apart from the section, have been sued[8]. Thus directors may be compelled to replace dividends paid out of capital[9], money applied for a purpose which the company cannot sanction[10], money improperly paid for underwriting commission[11] or money improperly paid to or received from a promoter[12]. The more serious acts of misfeasance are : the allotment of shares by the directors without having received the minimum subscription or the money due on application for shares ; obtaining by fraud the certificate for commencement of business ; commencing business although the directors had not paid the application and allotment moneys due on their shares[13]. For a wilful contravention of the provisions of s. 101 the directors will be liable to pay compensation to the company under s. 102 (2). Under s. 235 they are liable to discharge every creditor of the company as well as to return to the shareholders the money paid for their shares. Such payments would be a contribution to the assets of the company[14].

Meaning of "misfeasance."

Instances of misfeasance.

A director who is party to a calculated and deliberate fraud in the floatation of the company and in the conduct of its business is guilty of misfeasance[14]. Promoters or

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1. Ibid and Cavendish-Bentinck v. Fenn [1887] 12 App. Cas. 652.
2. Dehra Dun Mussoorie E. Tramways Co. v. Hansraj [1935] A. 995, 159 I. C. 907.
3. Nanak Chand v. Sardar Singh [1938] L. 577, 40 P. L R. 883.
4. Gopalaswami v. Krishnaswami [1941] M. 53, [1940] 2 M. L. J. 594, [1940] M. W. N. 1056 relying on In re Etic, Ltd. [1928] 1 Ch. 861.
5. Sri Ram v. Nur Muhammad (supra).
6. In re Etic Ltd. [1928] 1 Ch. 861 ; see also note 3, last page.
7. Per Lord Macnaghten in Cavendish-Bentinck v. Fenn [1887] 12 App. Cas. 652 ; City Equitable Fire Insurance Co. (supra) at p. 507.
8. Kingston Cotton Mills Co. No. 2 [1896] 1 Ch. 331.
9. Oxford B. B. &c. Society [1887] 35 Ch. D. 502.
10. London Trust Co. v. Mackenzie [1893] W. N. 9, 68 L.T. 380.
11. Faure Electric Accumulator Co. [1889] 40 Ch. D. 141.
12. Ex. p. Pelly [1882] 21 Ch. D. 492 ; Carriage C. S. Assn. [1884] 27 Ch. D. 322.
13. In re Etic Ltd, [1928] Ch. 861.
14. Indian States Bank v. Sardar Singh [1934] A 855, 154 I.C. 33.

directors who have made a secret profit can be compelled to repay it 1. But directors who have been guilty only of an error of judgment are not liable 2, nor are they liable for negligence unless their neglect has been, in a business sense, culpable or gross 3. Even if the payment by the directors be *ultra vires*, they are not liable if they made the payment honestly, reasonably believing in a state of facts which would justify the payment (*Kingsttln C. Mills Co.*, supra). "I cannot think that it can be expected of a director that he should be watching either the inferior officers of the bank or verifying the calculations of the auditor himself. The business of life could not go on if people could not trust those who were put into a position of trust for the express purpose of attending to details of management" 4. "I agree with what was said by Sir George Jessel in *Hallmark's case* 5 or by Chitty J. in *in re Denham & Co.* 6 that directors are not bound to examine entries in the company's books" 7. Where the general board of a bank delegates under the articles its powers of sanctioning loans to a committee of selected directors and the committee sanction a loan to a man of no means, the directors cannot be held guilty of misfeasance and made personally liable 8.

Liability.

In this connection the following observation of Sir Aurthur Wilson regarding the responsibility of the presidents and other directors should be remembered : "Attempts have repeatedly been made to render them personally liable on the ground that they have trusted regularly authorized officers of the company, that they have failed to detect, and been misled by, misrepresentation or concealment by such officers when there was no reason for doubting their fidelity. But such attempts have not been successful. It is sufficient to refer to the case of *Dovey* v. *Cory* (1901) A. C. 477 in which the subject was fully considered by the House of Lords" 9.

"Officers."

The following are officers within the mesning of this section : the secretary 10, the auditors 11 except a person casually employed by the directors to prepare a balance sheet 12, a solicitor when remunerated by a fixed salary 13 but not when employed in the ordinary way 14, and persons whose duty it is to invest the company's money and hold the investment 15, but not trustees of a debenture trust-deed or bankers 16. As to whether an auditor is an officer see however notes to s. 145.

The misfeasance summons has been constantly resorted to, *e.g.*, where directors have used funds of the company for objects not sanctioned by the company's memorandum of association or paid dividends out of capital, or made secret profits or sold their property to the company.

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1. Gluckstein v. Barnes [1900] A.C. 240.
2. Rance's case [1870] 6 Ch. App. 104 ; Cullerne v. London & S.B. Society [1890] 25 Q.B.D. 485 ; New Mashonaland Co. [1892] 3 Ch. 577.
3. Lagunas Nitrate Co. v. Lagunas Syndicate [1899] 2 Ch. 392.
4. Per Lord Halsbury L. C. in Dovey v. Cory [1901] A.C. 477 at p. 486.
5. [1878] 9 Ch. D. 329.
6. [1883] 25 Ch. D. 752.
7. Per Lord Davey in Dovey v. Cory (supra) at p. 493.
8. National Bank of Upper India v. Dinanath [1926] O. 243, 95 I.C. 234.
9. Prefontaine v. Grenier [1907] A.C. 101 at pp. 109-10.
10. Mackay's case [1876] 2 Ch. D. I.
11. Kingston Cotton Mills Co. No. 1 [1896] 1 Ch. 6.
12. Western Counties S. B. & Milling Co. [1897] 1 Ch. 617 ; City Equitable Fire Insurance Co. [1925] Ch. 407.
13. Liberator P. B. Building Society [1894] 71 L. T. 406.
14. Kingston Cotton Mills Co. No. 1 [1896] 1 Ch. 6.
15. British G. Life Assurance Co. [1880] W. N. 63, 14 Ch. D. 335.
16. Imperial Land Co. [1870] L. R. 10 Eq. 298.

What is a misfeasance.

It is a misfeasance for directors to qualify themselves by taking shares from the promoters holding them in trust for the latter and executing a blank transfer which the promoter may fill up and so disqualify the directors whenever they please, the result being that the directors are bound to act according to the will of the promoters 1. In such a case the directors will be liable for the amount of qualification and may be liable for acts done on account of their subservient position 1. It is wrong and improper for the directors to accept any gift whatever while the consideration or completion of a contract is still open 2.

Director's misfeasance.

Directors are responsible for the management of the company where by the articles of association the business is to be conducted by the board with the assistance of an agent. They cannot divest themselves of their responsibility by delegating the whole management to the agent and abstaining from all enquiry. If the latter proves unfaithful under such circumstances, the liability is theirs just as much as if they themselves had been unfaithful. In such a case the estate of the deceased director is liable on the ground that the misfeasance of a director is a breach of trust and not a mere personal default 3. The section gives a summary remedy only against such directors or other officers as have been personally guilty of some act of misfeasance and does not give the Court power to make an order against the directors *en masse* for all acts of misfeasance without any specific finding against the individuals who are actually responsible for the particular acts of misfeasance 4. Elaborate discussion as to the liability of directors and auditors under this section will be found in the case noted below 5, where the previous authorities have been considered.

Although the liability of a director depends more or less on the particular circumstances of each case and also the memorandum and articles, yet apart from this where the directors have been wilfully shutting their eyes to the acts of the agents or managing agents and recklessly sanctioning acts of such agents consciously and thereby aiding misfeasance, misapplication and falsification of balance sheets, and the state of affairs continues over a series of years, the directors are guilty of misconduct and are liable to pay compensation 6.

This section applies to the conduct of a director as such and anything done by him during the period of his directorship in his capacity as a debtor cannot be made a ground of liability under the section 7. A director is not trustee of the loans advanced by the company before his acceptance of office as such 8. Where in an application under this section the liquidator sought to establish the liability of an ex-director on the ground that he did not, at the time of his appointment as director, disclose his indebtedness to the company, it was held that it was the duty of the applicant to satisfy the Court that loss or damage resulted to the company from the alleged non-disclosure 8.

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1. London & S. W. Canal Ltd. [1911] 1 Ch. 346.
2. Eden v. Ridsdale Ry. Lamp Co. [1889] 23 Q. B. D. 368; Archer's case [1892] 1 Ch. 322.
3. New Fleming Spinning & Weaving Co. v. Kessowji Naik [1885] 9 Bom. 373.
4. Jadu Nandan v. Ashutosh [1902] 29 Cal. 688; see also Trevor v. Whitwoth [1888] 12 App. Cas. 409; Denham & Co. [1884] 25 Ch. D. 752; National Funds Assurance Co. [1879] 10 Ch. D. 118.
5. City Equitable Fire Insurance Co. [1925] Ch. 407; see also S. C. Mitra v. Nawab Ali Khan [1926] O. 153, 92 I. C. 50. See notes to ss. 83A & 145.
6. Govind v. Rangnath [1930] B. 572, 54 Bom. 226, 32 Bom. L. R. 232.
7. Hansraj v. Lahore Bank [1915] 27 I. C. 594.
8. Hansraj v. Lahore Bank (supra).

The insertion of names of persons as vendors when they have no real interest in the property sold being a device for enabling them to get fully paid up shares for their services in the promotion of the company, if such shares are issued to them it is a misfeasance on the part of the directors 1.

The mere fact that the directors of a company carrying on banking business allow advances to be made on the strength of a promise by the debtor to execute a mortgage instead of the mortgage itself, does not amount to an act of misfeasance on the part of the directors so as to make them personally liable to the extent of the amount of advances; but where the directors permit a depositor to make an overdraft and one of the directors who is a creditor of such depositor receives a portion of the amount represented by the overdraft in payment of the debt due to him by the depositor, such director cannot be allowed to retain the amount and is liable to refund it to the bank 2.

Directors & other officers.

De facto directors or managers are liable if loss has resulted to the company through their acts of misfeasance 3. The executors of a deceased officer are not officers and are not therefore liable to misfeasance proceedings 4; but the survivors of several directors are liable 5. The estate of a deceased director however remains liable for his breaches of trust 6 but not for his negligence 7.

"If the directors apply money of the company for purposes so outside its powers that the company could not sanction such application, they may be made personally liable as for a breach of trust. On the other hand, if they apply the money of the company or exercise any of its powers in a manner which is not *ultra vires*, then a strong and clear case of misfeasance must be made out to render them liable. Lord Hatherley, in *Overend & Gurney* Co. v. *Gibb* 8 intimates that in such a case their conduct must amount to *crassa negligentia*. In *Mazeti's case* 9 a definite test is applied, Lord Justice James said :—'A director should not be held liable upon any very strict rules which were laid down by the Court of Chancery to make unfortunate trustees liable; directors are not to be made liable on those strict rules which have been applied to trustees'. And he intimates that the negligence for which a director would be held liable must be such as would make a managing director of a business liable to his employers. Lord Justice Brett said, the director must be 'guilty of such negligence as would make him liable in an action. Mere imprudence is not such negligence. Want of judgment is not. It must be such negligence as would make a man liable in point of law'; and with this Lord Justice Cotton concurs. This is the law" 10.

Managing director.

Where the managing director of a bank wishing the bank to make a better show than the real facts of its working would warrant, in order to maintain the confidence of the shareholders and the public and so to make possible a project for increasing the bank's capital, by some manipulation of the

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1. Bland's case [1893] 2 Ch. 612 C. A.
2. S. C. Mitra v. Nawab Ali Khan [1926] O. 153, 92 I. C. 50.
3. Conventry & Dixon's case [1880] 14 Ch. D. 660.
4. British G. Life Assurance Co. (supra).
5. Conventry & Dixon's case (supra) & Felton's Executor's case [1865] L. R. I Eq. 219; British G. Life Assurance Co. (supra).
6. *Re* Sharp [1892] 1 Ch. 154.
7. Overend v. Gurney & Co. [1869] 4 Ch. App. 701.
8. L. R [1872] 5 H. L. 480, 487.
9. [1880] 28 W. R. 542, 543.
10. Faure Electric Accumulator Co. [1889] 40 Ch. D. 141 at p. 152.

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Jammu & Kashmir
Srinagar.

accounts induced the shareholders to declare a larger dividend, it was held that the managing director was guilty under s. 409 I.P.C., because being entrusted with the property of the bank, he dishonestly used and disposed of some of the property contrary to the bank's articles of association, causing the shareholders to declare a dividend larger than what the profits warranted [1]. If a balance-sheet falsely states the condition of the company, it is a false balance-sheet, though it follows the accounts as shown in the books of the company [2].

A managing director occupies the position of a trustee for the company and he is bound to exercise his powers for the benefit of the company and for that alone. He cannot in law withdraw from the till of the company a sum of money and mix it with money belonging to himself. In such a case he is guilty of breach of trust and misfeasance [3]. An order under this section should however be made only on a clear case being made out [3]. The fact that the act was not concealed from the auditors does not obviate the guilt, nor can it be ratified by the board of directors [3]. The funds of the company cannot be used by the directors for paying their own litigation costs, although these would not have been incurred if they had not been directors [4]. But the costs of prosecution for libel on the company, if properly incurred, must be paid by the company [5]. A director is, no doubt, liable to the company for any unauthorized profits made by virtue of his office [6]. But if he is acting in the interest of the company, he is not liable merely because he is also promoting his own interest [7].

If a director has received moneys of the company which it was *ultra vires* for it to pay, he can be made to repay it at the instance of the liquidator or creditors, although all the shareholders knew and approved of the payment [8]. But it is otherwise if the payment was *intra vires* [9]. Where directors receive benefits from promoters or vendors, complete disclosure of the facts in the prospectus will protect the former from liability to repay [10]. A partial and misleading disclosure however will not suffice [11].

Error of judgment.

Where money is lost through an error of judgment on the part of the directors, it cannot be recovered either under this section or by action [12]. A director is not bound to bring any special qualification to his office or to have knowledge of the particular class of business he controls; but if he has knowledge he must use it to the best of his ability [13]. A release given in general terms by a company to a director will not be a protection [14]; but articles declaring that the director shall be liable only in the case of dishonesty is a protection against a claim for negligence [13]. But see s. 86C. A director is not bound to examine entries in the books and is entitled to rely on accounts kept and audited by duly authorized officers[1].

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[1] Emp. v. Rash Behary [1908] 35 Cal. 450 distinguishing Queen-Empress v. Moss [1894] 16 All. 88.
[2] Queen-Empress v. Moss (supra).
[3] A. E. Alexander & Co. [1925] 41 C. L. J. 443, 88 I. C. 672, [1925] C. 852.
[4] Pickering v. Stephenson [1872] 14 Eq. 322.
[5] Studdert v. Grosvenor [1886] 33 Ch. D. 528.
[6] Parker v. Mackenna [1874] 10 Ch. App. 96.
[7] Hirsche v. Sims [1894] A. C. 654.
[8] George Newman & Co. [1895] 1 Ch. 674 ; but see Innes & Co. [1903] 2 Ch. 254.
[9] A. G. for Canada v. Standard Trust Co. [1911] A. C. 498.
[10] Postage Stamp &c. Co. [1892] 3 Ch. 566.
[11] Olympia Ltd. [1898] 2 Ch. 153, [1900] A. C. 240, *sub nom.* Gluckstein v. Barnes; Lagunas Nitrate Co. v. Lagunas Nitrate Syndicate [1899] 2 Ch. 392.
[12] Overend and Gurney Co. v. Gibb [1872] 5 H. L. 480 ; Dovey v. Cory [1901] A. C. 477 ; New Mashonaland Co. [1892] 3. Ch. 577.
[13] Brazilian Rubber Estates [1911] 1 Ch. 425.
[14] Joint Stock T. &. F. Corpn. [1912] S. J. 272.

A director cannot set off a debt due to him from the company against his liability to pay damages for misfeasance[2].

Payment of dividend.

Distribution of moneys to the shareholders in the shape of dividends or profits when in fact no profits are being earned, is misapplication of the company's funds. When the directors blindly trust a dishonest manager and allow themselves to be in utter ignorance of the affairs of the company, they cannot escape liability although they are not dishonest[3]. So the auditors who, if they had done their dury, would readily have discovered the true state of affairs, are similarly liable[3]. But where a director in assenting to the payment of dividends out of capital and to advances on improper security honestly relied on the judgment, information and advice of the chairman and general manager by whose statements he was misled and whose integrity, skill and competence he had no reason for suspecting, it was held by the House of Lords that he was not negligent of his duties as director and was not liable on the winding up[4].

Promoters.

A misfeasance summons may be brought against promoters in respect of undisclosed profits received by them[5]. As to who is or who is not a promoter see notes to s. 100 *ante* and *Thiruvenkatachariar* v. *Velu Mudaliar*[6]. Such summons may be brought against directors where they have received money from promoters in pursuance of an agreement to indemnify against loss on qualification shares[7], or where they have received money from vendors to the company to pay for qualification shares[8]. They are also liable for presents or remuneration improperly received out of the assets of the company[9]. As to travelling expenses taken by directors see the case noted below[10]. Directors and promoters, who do not disclose the fact that they are vendors of property, are guilty of a breach of duty and the company has a remedy against them even on a misfeasance summons[11]. In all cases in which a director becomes entitled to profits in fraud of the company, the latter can recover the amount of the commission or bribe not only from the director but also from the person giving the bribe[12]. The principle that a person in a fiduciary position must not make secret profits is based not on actual fraud but on motives of public policy[13]. Directors of an insolvent company cannot use their powers to benefit themselves in view of an approaching winding up[14].

A misfeasance summons is the proper mode of procedure where shares or

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1. Denham & Co. [1883] 25 Ch. D. 752.
2. *Ex p.* Pelly [1882] 21 Ch. D. 492.
3. Union Bank, Allahabad [1925] A. 519, 47 All. 669, 23 A. L. J. 473.
4. Dovey v. Cory [1901] A. C. 477.
5. Gluckstein v. Barnes [1900] A. C. 240; *re* Jubilee Cotton Mills [1923] 1 Ch. 1.
6. [1937] M. 154.
7. Archer's case [1892] 1 Ch. 322 C. A.
8. Postage Stamp &c. Co. (supra).
9. London Gigantic Wheel Co. [1908] 24 T. L. R. 618 C. A.
10. Young v. Naval &c. Co-operative Society [1905] 1 K. B. 687.
11. Leeds and Hanley Theatres [1902] 2 Ch. 809 C. A.
12. Grant v. Gold Exploration &c. Syndicate [1900] 1 Q. B. 233, 248; Horenden v. Millhoff [1900] 83 L. T. 41; Salford Corpn. v. Lever [1891] 1 Q. B. 168.
13. Bray v. Ford [1896] A. C. 44.
14. Syke's case [1872] 13 Eq. 255; Gibert's case [1870] 5 Ch. App. 559.

Misfeasance summons—where proper procedure.

debentures have been improperly issued to directors at a discount or undervalue 1, or where directors have improperly paid dividends out of capital 2, or where they have knowingly allotted shares to infants 3, or where they have improperly received director's fees 4, or where they have generally acted *ultra vires* 5. But where the misfeasance is an act which is not *ultra vires* or dishonest, directors are not liable unless it is shown that they did not really exercise their judgment 6. If they act within their powers with such care as is reasonable to be expected from them, they are not liable 7. Where however the act is *ultra vires*, the directors, although they have acted quite honestly, are liable to replace the moneys which have been misapplied 8 unless they have acted after making proper enquiries and exercising due care and on reasonable grounds in which case they are not liable even for paying dividends out of capital 9, or improperly investing or paying away the company's money 10, or where they have improperly received commission 11 or where an act benefiting the directors is a fraudulent preference 12. Facts which may show imprudence in the exercise of powers, undoubtedly conferred upon directors, will not subject them to personal responsibility. The imprudence must be so great and manifest as to amount to *crassa negligentia* 13.

Where not ultra vires.

Where the alleged misfeasance consists of an act which is not *ultra vires* the company, and not fraudulent or dishonest, the directors are not liable unless it be shown that they did not really exercise their discretion and judgment as such directors, and the omission to do so resulted in loss or damage to the company 14.

Where circumstances require investigation.

Where a misfeasance summons against a director was dismissed with costs, the Court intimated in a case 15, that as there were many circumstances requiring investigation, the liquidator had only done his duty in bringing the matter before the Court and that no difficulty should be placed in the way of his recouping himself out of the assets.

Liquidator's misfeasance.

Where the liquidator allows the company to be dissolved before its debts have been paid, he commits a breach of his statutory duty and is liable in damages to the creditors 16. Where assets have been distributed without regard to a creditor's claim, he may, even after dissolution of the company, obtain in an action damages against the liquidator for breach of his duty 17. In such a case he may be brought to account on a misfeasance summons if the creditor is the Crown 18. But generally speaking where the company has been dissolved, the remedy by misfeasance application no longer exists 17. The liquidator in a

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1. London and Colonial Finance Corpn. [1897] 13 T. L. R. 576 C. A.
2. Dovey v. Cory [1901] A. C. 477.
3. Crenver &c. Co., ex. p, Wilson [1872] 8 Ch. App. 45.
4. Public Supply Assn. [1880] W. N. 106.
5. New Mashonaland Exploration Co. [1892] 3 Ch. 577.
6. Ibid. 7. National Bank of Wales [1899] 2 Ch. 629.
8. Re Sharpe [1892] 1 Ch. 154 C. A.
9. Kingston Cotton Mills Co. [1896] 2 Ch. 279 C. A ; Daulat Rai v. Emperor [1915] 29 I. C. 105, 16 Cr. L. J. 473. 10. Lands Allotment Co. [1894] 1 Ch. 616 C.A.
11. Oxford &c. Society [1887] 35 Ch. D. 502.
12. Washington Diamond Mining Co. [1893] 3 Ch. 95 C. A.
13. Overend & Gurney Co. v. Gibb [1872] 5 H. L. 480.
14. New Mashonaland Exploration Co. (supra).
15. Claridge's Patent Asphalte Co. [1921] 1 Ch. 543 at p. 549.
16. Argylles Ltd. v. Coxeter [1913] 29 L.T.R. 355.
17. Pulsford v. Devenish [1903] 2 Ch. 625.
18. New Zealand J. S. and General Corpn. [1907] 23 T. L. R. 238.

voluntary winding up is not, apart from negligence, liable for wrongly admitting a claim by an alleged creditor ; but where the liquidator does not fulfil his duty of properly investigating the claim, he is liable for misfeasance especially where the claim is an invalid one 1.

The question as to the liability of a liquidator who without negligence allowed proof of a person having no legal claim was left open by the Court of Appeal in England in *Windsor Steam Coal Co.* 2. A high standard of care and diligence is however required from a liquidator in a voluntary winding up. It is his duty to investigate the validity of the proofs, and where this duty is not discharged the liquidator cannot escape liability. The articles of a company not being a contract between the company and its liquidator do not give protection to liquidators, but this section gives a wide discretion to the Court 3. Following *Sunlight I. G. Lamp, Ltd.* 4 Maugham, J. in the last cited case held that the liquidator should be ordered to contribute, by way of compensation, only such a sum as would enable all creditors to be paid in full with interest at 5 p. c. The position of a liquidator examining a proof for admission or rejection is the same as that of a trustee in bankruptcy as decided in *In re Van Laun* 5.

Auditor's misfeasance.

An auditor who is duly appointed by a general meeting and not casually called in as occasion may require is an officer of the company within the meaning of this section 6. A misfeasance summons is a proper remedy when an auditor by his neglect of duty has caused property of the company to be improperly paid away, as for instance, in dividends 7. See notes to s. 144.

Auditor whether officer or not.

The question however whether the auditors are to be considered as officers of the company must be decided with reference to each company by a consideration of the particular facts and especially by reference to the articles of association 8. Where a person has been appointed auditor and in pursuance thereof does the work of audit, he cannot be heard to say that his appointment was invalid or irregular 9. As to whether an auditor is an officer within the meaning of a particular clause in the articles of association see notes to s. 144.

Where liable.

If the auditor fails in his duty of examining the books of the company carefully and satisfying himself that they show the true financial position, the auditors will be jointly and severally liable with those who are responsible for the management of the company, although he is not guilty of any dishonesty 10.

Bankers, solicitors & brokers.

Neither bankers nor solicitors are officers of a company within the meaning of this section 11, but if the solicitor has other duties and occupy a different position from that of a purely legal adviser, he may come within the section 12. In *Liberator P. B. B. Society* 12 Cave J. observed : "It seems to me that merely because he was appointed solicitor to the society, without more, the solicitor does not become an officer of the society any more than it has been held

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1. Home and Colonial Insurance Co. [1930] 1 Ch. 102.
2. [1929] 1 Ch. 151.
3. Home and Colonial Insce. Co. [1930] 1 Ch. 102.
4. [1900] 16 T. L. R. 535.
5. [1907] 2 K. B. 23.
6. D'Connell v. Himalayan Bank [1896] 18 All. 12 ; London and General Bank [1895] 2 Ch. 673.
7. Lopdon and General Bank (supra).
8. Lovelock and Lewes v. Malabar T. & S. Mills [1913] 13 M. L. T. 282, 18 I. C. 997.
9. Ibid and Stuart Smith v. Bank of Burma [1914] 24 I. C. 431.
10. Union Bank, Allahabad (supra).
11. Carter's case [1886] 31 Ch. D. 496.
12. Liberator &c. Society [1894] 71 L. T. 406.

that a banker does, if he is appointed banker to the society. All these persons render services to the society, but they cannot be said to be in the employment of the society so as to make them officers." There is no difference in the position of a broker to a company whose duties are confined to dealing with its shares and the position of its banker who has to deal with the moneys of the company. Therefore a broker is not an officer of the company and does not come under this section 1.

Managing agents.

Where a firm is entrusted with the management of a company, it cannot escape liability for misfeasance or non-feasance merely by calling itself "managing agents" instead of "managers" 2.

Compensation must be in the nature of damages.

The compensation which under this section may be assessed against a defaulting director or other officer of a company is of the nature of damages. It is therefore necessary that the loss of the company in respect of which compensation is asked for should be direct and not a remote and more or less speculative consequence of the misfeasance 2.

Practice.

The practice of allowing witnesses on the trial of misfeasance summonses to give their evidence in chief by affidavits prepared or settled for them by others in cases where real disputes of facts exist or where various charges of misfeasance or breaches of trust are involved, is open to grave objection 3. A misfeasance summons ought to be set down in the witness list as soon as the points of claim, defence and reply have been delivered 4.

Costs.

If the official receiver or liquidator institutes proceedings for misfeasance, the Court has jurisdiction to order him personally to pay costs 5.

Jurisdiction.

It seems that the Court has no jurisdiction to set aside a contract between the company and a director or promoter, and even if it has, such jurisdiction will not be ordinarily exercised 6. The jurisdiction under this section is discretionary and where all the creditors are satisfied and a large majority of the contributorises are prepared to waive any claim against the directors for an alleged secret profit, the Court may in its discretion refuse relief under this section in respect of the claim 7.

Contributory's remedy.

The section is not confined to claims the successful assertion of which will increase the assets of the company, and an individual contributory, who has suffered damage by the act of the liquidator, may bring an action against the liquidator 8.

Moneys recovered under this section for misfeasance may be assets for debenture-holders to whom the company has issued debentures charging all its undertakings, present and future 9.

Though a director has no right to set off a debt due to him from the company

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1. Thiruvenkatachariar v. Velu Mudaliar [1937] M. 154.
2. Totaram v. Emp. [1916] 17 Cr. L. J. 306, 35 I. C. 482.
3. Practice Notes [1921] W. N. 356.
4. Practice Notes [1922] W. N. 294.
5. Bank of Multan v. Hukumchand [1923] 71 I. C. 899; but see Ramasami v. Sriramulu [1896] 19 Mad. 149 and D'Connell v. Himalayan Bank (supra).
6. Centrifugal Butter Co. [1913] 1 Ch. 188.
7. Joseph Hargreaves Ltd. [1900] 1 Ch. 347.
8. Hills Waterfall &c. Co. [1896] 1 Ch. 947.
9. Anglo-Austrian &c. Union [1895] 2 Ch. 891.

Set off in regular suit.

against a claim under this section which provides a summary remedy 1, he is entitled to set off the amount due to him when a regular suit is brought by the company in respect of the claim 2.

Choses in action.

Claims in respect of misfeasance being choses in action pass under an assignment of all its assets, property and effects 3. They may be sold 3.

Judicial proceedings.

An application under this section is in the nature of a plaint and the proceedings are judicial proceedings; but the provisions of the Code of Civil Procedure are inapplicable, because express provisions for its contents and the formalities connected therewith are provided for by the Act and the rules made thereunder 4. As to the contents of such a petition see the last cited case and the Rules framed by the different High Courts. Proceedings under the Act are proceedings in a Court of civil jurisdiction within the meaning of s. 141 of the Code of Civil Procedure, and a liquidation Court in which a misfeasance proceeding is pending can, in a proper case, make an order for attachment before judgment under Or. 38, R. 5, C. P. C. 5.

Joint trial.

Where in proceedings under this section against certain persons, the matters alleged against some of them are entirely different from those which are the subject matter of the investigation against others, the claims against all cannot be tried jointly on principles under O. 2, r. 6, C. P. C. 4.

Representative.

A representative or an executor of a promoter, director and such other person cannot be brought within the purview of this section. The liquidator may however bring a regular suit against such a representative 6.

Effect of death.

In the case of death of a director his estate remains liable for any breach of trust he has committed 7, but not for negligence 8, trespass or deceit 10 unless his estate has benefited by the fraud 9. Where a director has been guilty of misconduct in sanctioning a loan fraudulently and in violation of the rules, a suit against him by the company for compensation is not one merely for tort but is one for breach of fiduciary obligation towards the company. Even if it is viewed as a suit for tort, the right to sue survives on his death against his legal representatives by the application of s. 306 of the Succession Act 10.

Liability of directors.

If the directors, without the knowledge of the shareholders, vote and pay themselves out of the company's funds commissions on purchases and sales, and make no mention of it in their report and balance-sheet, they are liable to repay the amount with interest 11. Where the directors permitted the company to commence business inspite of their knowledge that permission to do so had

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1. Ex. p. Pelly [1882] 21 Ch. D. 492, 502 and 507; Flitcroft's case [1882] 21 Ch. D. 519; Carriage C. Supply Assn. [1884] 27 Ch. D. 322.
2. Ahmedabad Co. v. Lakshmishankar [1908] 30 Bom. 173, 194.
3. Park Gate Wagon Works Co. [1881] 17 Ch. D. 234 C. A.; Totaram v. Emp. [1916] 17 Cr. L. J. 306. 35 I. C. 482.
4. Mulk Raj v. O. L. Peoples Bank of N. India [1938] L. 658.
5. Kanshiram v. Hindustan National Bank [1928] L. 376, 106 I. C. 808.
6. Billimoria v. De Souza [1926] L. 624, 8 L. L. J. 376, 27 P. L. R. 676; Official Liquidator v. Jugal Kishore [1939] A. 1; see also East of England Bank [1865] 1 Eq. 219; Exp. Hawkins [1868] 3 Ch. App. 787, 791; British Guardian Life Assurance Co. [1880] 14 Ch. D. 335.
7. Re Sharp [1892] 1 Ch. 154; Emma Silver Mining Co. v. Grant [1881] 17 Ch. D. 122.
8. Phillips v. Homfrey [1883] 24 Ch. D. 439.
9. Peek v. Gurney [1874] 6 H. L. 377.
10. Peoples Bank of Northern India v. Des Raj [1935] L. 705.
11. Oxford B. B. Society [1887] 35 Ch. D. 502.

been obtained owing to false declaration and that the directors had not paid what was due in respect of their respective shares and consequently the company suffered loss, the directors were liable to make repayment under this section. The directors must be deemed to know the law 1.

Co-directors.

A director is liable for the acts of his co-directors, if knowing that they intend to commit a breach of trust he does not, by applying for injunction or otherwise, prevent it 2. But a director, who has in fact retired, is not liable for subsequent acts or statements 3. Nor is an innocent director liable for the fraud of his co-directors in issuing to the shareholders false and fraudulent reports and balance-sheets, if the books and accounts of the company have been kept and audited by duly appointed and responsible officers and he has no ground for suspecting fraud. Consequently if such a director has received dividends declared and paid in pursuance of such reports and balance-sheets, such dividends having been in fact payments of capital, he cannot be called upon to repay the dividends so paid 4.

But a director, who knowing the improper character of a transaction contents himself with protesting only, stands in no better position than his fellow directors 5. He cannot escape liability by professing ignorance of a state of affairs which he might have learnt from the books of the company 6. Where the debtor does not pay his debt, and the loan is tainted with dishonesty of the directors, they must be held responsible for the debt which is found to be bad 7. The question whether a particular debt is worth pursuing by suit or in execution is however largely a matter of discretion in the hands of business men, and the Court cannot hold managers responsible for every unrecovered debt merely because steps by way of suit were not taken 8.

Contribution.

A director can maintain a suit for contribution against his co-directors in respect of damages paid under this section and the liability to contribute survives in the case of death of a co-director 9. But where two directors join in signing a cheque whereby a part of the company's funds is used for a purpose not authorized by the articles and one of the directors is subsequently compelled to replace the money so used, he cannot recover contribution from the other if the money has been applied for the sole benefit of the director claiming contribution even if the other director has assented to its being so used 10.

Suit.

A misfeasance proceeding under this section, is merely an examination by the Court into the conduct of an officer of the company, and as a result of that examination the Court may order the officer to restore the money or the property of the company as the Court may think just. Such proceedings cannot be said in any way to be a "suit or other legal proceeding" within the meaning of s. 280. Hence on this ground as well as on the ground of public policy an official liquidator who files a misfeasance summons cannot be required to furnish security for costs 11.

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1. Doss v. Connell [1937] M. 124.
2. Lands Allotment Co. [1894] 1 Ch. 616.
3. Dovey v. Cory [1901] A. C. 477.
4. Denham & Co. [1883] 25 Ch. D. 752.
5. Joint Stock Discount Co. v. Brown [1869] 8 Eq. 381 ; Ramskill v. Edwards [1886] 31 Ch. D. 100.
6. Turquand v. Marshall [1868] 6 Eq. 112 ; Esparto Trading Co. [1879] 12 Ch. D. 191, 204 ; Land Credit Co. of Ireland v. Fermoy [1869] 8 Eq. 7, 11 ; Marzetti's case [1880] 42 L. T. 206.
7. Peoples Bank of Northern India v. Hargopal [1936] L. 271, 160 I. C. 759.
8. Venkatachalapathi v. Guntur Cotton &c. Mills [1929] M. 353, 115 I. C. 486.
9. Ramskill v. Edwards (supra).
10. Walsh v. Bardsby [1931] 47 T. L. R. 564.
11. Official Liquidator v. Liaqat [1933] A. 205, [1933] A. L. J. 199.

Onus. The onus is on the pliantiff to prove misfeasance [1]. As to the measure of damages see the case noted below [2].

Amendment of petition. An order allowing an amendment of a petition made under this section entirely altering its character by introducing grave questions of fraud after a period of two and a half years has been held to be highly unjudicial [3].

As to the power of the Court to grant relief to a director who has been guilty of negligence or breach of trust see s. 281.

Penalty for falsification of books. **236.** If any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books, papers or securities, or makes, or is privy to the making of any false or fraudulent entry in any register book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

It is not correct to hold that charges of falsification of accounts or forgery against the persons mentioned in this section can only be tried under this section. A penal enactment in a special Act is no bar to a prosecution under the Penal Code [4].

Prosecution of delinquent directors. **237.** (1) *If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the registrar.*

(2) *If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator relating to the matter in question, as he may require.*

(3) *Where any report is made under sub-section (2) to the registrar, he may, if the thinks fit, refer the matter to the* [Central Government] *for further inquiry, and the* [Central Government] *shall thereupon*

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1. Cavendish-Bentinck v. Fenn (supra).
2. Jubilee Cotton Mills [1923] 1 Ch. 1, 22.
3. Sansar Chand v. Punjab Industrial Bank [1929] L. 710.
4. Emperor v. Bishan Shahai [1937] A. 714, [1937] All. 779, [1937] A. L. J. 1073.

investigate the matter and may, if they think it expedient, apply to the Court for an order conferring on any person designated by the [Central Government] *for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.*

(4) If on any report to the registrar under sub-section (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the registrar, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report has been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall place the papers before the Advocate General or the public prosecutor and if advised to do so institute proceedings. * * *

Provided that no prosecution shall be undertaken without first giving the accused person an opportunity of making a statement in writing to the registrar and of being heard thereon.

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[*(7) Notwithstanding anything contained in the Indian Evidence Act, 1872, when any proceedings are instituted under this section it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give, and for the purposes of this sub-section the expression agent in relation to a company shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.*]

(8) If any person fails or neglects to give assistance in manner required by [*sub-section (7)*], *the Court may, on the application of the registrar, direct that person to comply with the requirements of the said sub-section, and where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect*

to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

Amendments.

By the Companies (Amendment) Act, 1936, this section has been substituted for the original s. 237. It reproduces s. 277 of the English Act of 1929. For its effect see Introduction. In sub-s. (3) the words "Central Government" within square brackets have been substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into force on 1st April, 1937. But with effect from 1st April, 1938 the Central Government has entrusted to Provincial Governments its functions under this section—see Gazette of India dated 26th March, 1938, Part I, p. 440. The original s. 237 was as follows :—

Prosecution of delinquent directors, etc.

237. (1) If it appears to the Court in the course of a winding up by or subject to the supervision of the Court that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding up, or of its own motion, direct the official liquidator or the liquidator (as the case may be) to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

By the amending Act II of 1938 which received the assent of the Governor General on 26th February, 1938 the following further amendments have been made in this section, namely : In sub-s. (6) after the words "institute proceedings" the words "and it shall be the duty of the liquidator and every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give" have been omitted; after the proviso the following paragraph has been omitted : "For the purposes of this sub-section, the expression 'agent' in relation to a company shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company" ; after sub-s. (6) the new sub-section 7 within square brackets has been inserted; and the former sub-s. (7) has been re-numbered as sub-s. (8) and in that sub-section so re-numbered the words and figure within square brackets have been substituted for the words and figure "sub-section (6)."

What the Court will consider.

In order to determine whether leave ought to be given to institute criminal proceedings under this section and whether the costs of the prosecution ought to be paid out of the assets of the company, the Court will consider whether it is a case in which an honest and upright man, desiring as a good citizen of doing his duty by the State, would feel that he ought, at his own expense, to institute a prosecution 1.

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1. London & Globe Finance Corpn. [1903] 1 Ch. 728 ; Charles Denham & Co. [1884] W. N. 122, 51 L. T. 570, 53 L. J. Ch. 113.

The law in this respect was laid down by Buckley J. in *London and Globe Finance Corpn.* [1903] 1 Ch. 728 in the following words : "I have next to consider upon what principles I ought to exercise the power given me by s. 162 of the Companies Act, 1862, to direct the official receiver to institute and conduct a prosecution at the expense of the assets. It is obvious that no one legitimately can or ought to institute a criminal prosecution with a view to his personal profit. Neither should a prosecution be instituted from motives of vengeance against the offender. The motives of every prosecution ought to be to inflict punishment upon the criminal for the proper enforcement of the law and for the advantage of the State, and with a view to deter others from doing the like. From the prosecution, no doubt, there may arise benefit to the prosecutor in the sense that if he be a person interested in commerce, it may be to his advantage to enforce commercial morality. But except in this sense the personal advantage of the prosecutor is not to be regarded"—at p . 733.

Then again : "Next affirmatively, what are the considerations which ought to govern it ? If the person at whose expense the prosecution would be instituted were not a class but were a single person, and that person were an honest and upright man desirous as a good citizen, of doing his duty by the State, are the circumstances such as in discharge of that duty he would feel that he ought at his own expense and to his own loss to institute a prosecution ? Not in every case in which a criminal offence has been committed would such an one think it his duty to prosecute. The question to be answered : Would he in the case think his duty to the State required him to prosecute ? If that question be answered in the affirmative, then upon principle I think that the Court ought to direct a prosecution. Further I think that the Court can, and in a proper case ought to, direct a prosecution without the assent, and even notwithstanding the dissent, of the class or many of the class at whose expense the prosecution would be instituted. It is noticeable that the section provides that the Court may act 'of its own motion.' No principle suggests itself to me upon which the Court ought 'of its own motion' to direct a prosecution other than that above indicated'—at pp. 734-35.

Jurisdiction unfettered.

The jurisdiction of directing a prosecution of directors or officers for offences in relation to the company for which they are criminally responsible is unfettered and may be exercised by the Court when it is satisfied that a *prima facie* case in support of the application has been made out, without allowing the application to stand over to enable evidence to be adduced in opposition [1].

The offences specially dealt with in regard to companies are those referred to in ss. 236 and 282. The Act however nowhere lays down that there can be no prosecution on a criminal charge otherwise than upon a direction by the company Judge [2].

A *de facto* manager is liable to be punished for publishing false statements with intent to deceive or defraud [3].

An appeal lies from an order under this section [4]. See notes to s. 202.

Penalty for false evidence.

238. If any person, upon any examination upon oath authorised under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or

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1. Charles Denham & Co. (supra).
2. Emperor v. Bishen Sahai [1937] All. 779, [1937] A. 714, [1937] A. L. J. 1073.
3. King v. Lawson [1905] 1 K. B. 541.
4. Shewram v. Lobo [1931] S. 120, 132 I. C. 474.

about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

See ss. 195 & 196 and notes thereto.

Penal Provisions.

238A. (1) *If any person, being a past or present director, managing agent, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up—*

(*a*) *does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company ; or*

(*b*) *does not deliver up to liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up ; or*

(c) *does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up ; or*

(d) *within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of one hundred rupees or upwards or conceals any debt due to or from the company ; or*

(e) *within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards ; or*

(*f*) *makes any material omission in any statement relating to the affairs af the company ; or*

(g) *knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof ; or*

(h) *after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company ; or*

(i) *within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or paper affecting or relating to the property or affairs of the company ; or*

(j) *within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company ; or*

(k) *within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company ; or*

(l) *after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses ; or*

(m) *has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for ; or*

(n) *within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ; or*

(o) *within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company ; or*

(p) *is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of*

Disposal of documents of company.

242. (1) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say) :—

(*a*) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs ;

(*b*) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

(2) After three years from the dissolution of the company, no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

In sub-sec. (2) it is "five years" in the English Act.

Voluntary winding up.

In the case below 1, when the company had been dissolved after a voluntary winding up, the liquidator was ordered to produce documents upon the footing that they were under his absolute control.

Power of Court to declare dissolution of company void.

243. (1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order, to file with the registrar certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Scope.

It appears that a dissolution made under cl. (d), sub-s. (1) of s. 154 *ante* cannot be declared void by virtue of the present section as s. 154 occurs in Part IV whereas this section occurs in Part V 2.

Upon the application within two years of the liquidator or any interested person the Court can declare the dissolution void and stay all proceedings 3.

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1. Birmingham Banking Co. [1867] 35 L. J. Ch. 150, 15 L. T. 203 ; but see Morgan's case [1884] 28 Ch. D. 620.
2. See Nokes v. Doncaster Amalgamated Collieries [1940] A. C. 1014 at p. 1021.
3. Eastern Investment Co. [1905] 1 Ch. 352.

Fraud.

An order of dissolution cannot be set asside on the ground of fraud unless fraud is alleged and proved. By whatever procedure it is sought to overthrow a judgment on the ground of fraud, the fraud must be definitely alleged and its particulars unequivocably stated 1. Fraud like any other charge of a criminal offence, whether made in civil or criminal proceedings, must be established beyond reasonable doubt. A finding as to fraud cannot be based on suspicion and conjecture 2.

Rights prior to dissolution.

Where a company is revived by order of the Court after dissolution, its rights prior to the dissolution are not affected 3. As to who are the persons interested see the case noted below 4.

After dissolution.

The dissolution does not debar the liquidator from taking action in respect of assets realized after the dissolution 5. Where the liquidator within two years from its dissolution presented a petition in which he craved the Court to declare the dissolution void, so as to enable him to grant a title to a certain property which belonged to the company and had been sold subsequent to the dissolution, the decree so craved was granted 6.

Effect of declaration.

An order under this section declaring the dissolution of a company to have been void does not affect the validity of proceedings taken during the interval between the dissolution and its avoidance 7. But where the landlord of the company re-enters and grants lease to another person of the demised property, the lease is not valid if subsequently the Court declares the resolution for winding up as void 8.

Bona vacantia.

Where the assets might be *bona vacantia*, upon an application on the ground that there were undistributed assets of the dissolved company, the Court held that the Attorney-General on behalf of the Crown should be served 9.

For the form of an order under this section see the case noted below 10.

Information as to pending liquidations.

244. (1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, *once in each year and at intervals of not more than twelve months*, until the winding up is concluded, *file in Court or with the registrar, as the case may be*, a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy

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1. Barrett v. African Products Ltd. [1928] P. C. 261, 110 I. C. 299 P. C.
2. Narayanan v. Official Assignee [1941] P. C. 93 (95), 196 I. C. 404.
3. Higginson & Dean [1899] 1 Q. B. 325.
4. Spottiswood, Dixon & Hunting Ltd. [1912] 1 Ch. 410.
5. Mathra Das v. Abdul Ghani [1917] 39 I. C. 769.
6. M' Call & Stephen Ltd. [1920] 57 Sc. L. R. 480.
7. Morris v. Harris [1927] A. C. 252.
8. Creet v. Gangaraj [1937] C. 129.
9. Henderson's Nigel Ltd. [1911] W. N. 159.
10. *In re* Shragers Ltd. [1920] 47 Cal. 620.

thereof or extract therefrom ; but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall be punishable accordingly on the application of the liquidator.

(3) If a liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues.

(4) *When the statement is filed in Court a copy shall simultaneously be filed with the registrar and shall be kept by him along with the other records of the company.*

Amendment. By the Companies (Amendment) Act, 1936, in sub-s. (1) for the words "at such intervals as may be prescribed" after the words "the liquidator shall", the words "once in each year and at intervals of not more than twelves months," and after the words "is concluded" for the words "file with the registrar" the words "file in Court or with the registrar, as the case may be" have been substituted. By the same Act the new sub-s. (4) has been added.

The provisions of this section apply whether the company is being wound up by or under the supervision of the Court or voluntarily 1.

Payment of liquidator into bank.

244A. (1) *Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as may be prescribed, pay the money received by him into a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 :*

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Court may authorise the liquidator to make his payments into or out of such other bank as the Court may select and thereupon those payments shall be made in the prescribed manner.

(2) *If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the Court may in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court and shall be liable to pay any expenses occasioned by reason of his default.*

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1. Stock & Share A. B. Co. [1894] 1 Ch. 736.

(3) A liquidator of a company which is being wound up shall open a special banking account and pay all sums received by him as liquidator into such account.

This section has been inserted by the Companies (Amendment) Act, 1936. It is based on s. 194 of the English Act of 1929.

For a list of the scheduled banks see pp. 286-87 *ante.*

Unclaimed dividends and undistributed assets to be paid to Companies Liquidation Account.

"**244B.** *(1) Where any company is being wound up, if the liquidator has in his hands or under his control any money of the company representing unclaimed dividends payable to any creditor or undistributed assets refundable to any contributory which have remained unclaimed or undistributed for six months after the date on which they became payable or refundable, the liquidator shall forthwith pay the said money into the Reserve Bank of India to the credit of the Central Government in an account to be called the Companies Liquidation Account, and the liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing unclaimed dividends or undistributed assets in his hands at the date of dissolution.*

(2) The liquidator shall, when making any payment referred to in sub-section (1), furnish to such officer as the Central Government may appoint in this behalf a statement in the prescribed form setting forth in respect of all sums included in such payment the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(3) The receipt of the Reserve Bank of India for any money paid to it under sub-section (1) shall be an effectual discharge of the liquidator in respect thereof.

(4) Where the company is being wound up by the Court, the liquidator shall make the payments referred to in sub-section (1) by transfer from the special banking account referred to in sub-section (3) of section 244A, and where the company is wound up voluntarily, or subject to the supervision of the Court, the liquidator shall, when filing a statement in pursuance of sub-section (1) of section 244, indicate the sum of money which is payable to the Reserve Bank of India under sub-section (1) which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(5) Any person claiming to be entitled to any money paid into the Companies Liquidation Account in pursuance of this section may

apply to the Court for an order for payment thereof, and the Court, if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due :

Provided that before making such order the Court shall cause a notice to be served on such officer as the Central Government may appoint in this behalf calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

(6) Any money paid into the Companies Liquidation Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government ; but any claim preferred under sub-section (5) to any money so transferred shall be allowable as if such transfer had not been made, the order for payment on such claim being treated as an order for refund of revenue.

(7) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall pay interest on the amount retained at the rate of twenty per cent. per annum and shall also be liable to pay any expenses occasioned by reason of his default, and, where the winding up is by or under the supervision of the Court, he shall also be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court.

(8) Nothing in this section shall apply in relation to companies with objects confined to a single Province which are not trading corporations."

Amendment. This section has been introduced by the Indian Companies (Amendment) Act XXXVI of 1940. It came into force on 5th April, 1941, *vide* Notification No. 24 (48)—Tr. (C. L.) 38 (i) in Part I p. 474 of the Gazette of India, dated 5th April, 1941.

Sub-s. (2). In exercise of the powers conferred by this sub-section and the proviso to sub-s. (5) the Central Government has (1) appointed the Provincial Registrars of Joint Stock Companies to be officers for the purposes of the said sections and (2) prescribed the following Form to be the Form referred to in the said section (vide Notification No. 24 (49)—Tr. (C. L.) 38 (ii) in Part I. pp. 474-475 of the Gazette of India, dated 5th April, 1941 :—

FORM

In the matter of the Indian Companies Act, 1913
and
In the matter of ... ... Limited.

Amount paid into Companies Liquidation Account (total of Column 2).

Date of payment ... ...

Particulars of the Statement filed under sub-section (1) of section 244 in which the amount paid was indicated and the date of filing.........

1	2	3	4	5	6
Names and last known addresses of persons entitled to participate in the amount paid.	Amount to which each person mentioned in column 1 is entitled.	Nature of sums included in the amount paid (state whether unclaimed dividends payable to creditors or undistributed assets refundable to contributories).	Nature of claim of each person mentioned in column 1.	Date when each amount mentioned in column 2 became payable or refundable.	Remarks.

Date.....................

Signature..............................

Liquidator.

Address................................

Sub-s. (8). For definition of "trading corporation" see cl. (17), sub-s. (1) of s. 2 and notes thereto.

245. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in British India, or elsewhere within the dominions of his Majesty, before any Court, Judge or person lawfully authorised to take and receive affidavits, or in any part of India other than British India before any Court authorised or continued by [*the Central Government or the Crown Representative*], or in any place outside His Majesty's dominions before any of His Majesty's Consuls or Vice-Consuls.

Court or person before whom affidavit may be sworn.

(2) All Courts, Judges, Justices, Commissioners, and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

Amendment. In sub-s. (1) the words within square brackets have been substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Rules.

246. (1) The High Court may, from time to time, make rules consistent with this Act and with the Code of Civil Procedure, 1908, concerning the mode of proceedings to be had for winding up a company in such Court and in the Courts subordinate thereto, *and for voluntary winding up (both members and creditors), for the holding of meetings of creditors and members in connection with proceedings under section 153 of this Act*, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-divisions of the shares of a company *and generally for all applications to be made to the Court under the provisions of this Act*, and shall make rules providing for all matters relating to the winding up of companies which, by this Act, are to be prescribed.

Power of High Court to make rules.

(2) Without prejudice to the generality of the foregoing power, the High Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the matters following, to be exercised or performed by the official liquidator, and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of—

(*a*) holding and conducting meetings to ascertain the wishes of creditors and contributories ;

(*b*) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets ;

(*c*) requiring delivery of property or documents to the liquidator ;

(*d*) making calls ;

(*e*) fixing a time within which debts and claims must be proved :

Provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

The words at the end of sub-s. (1) "and shall make rules.........prescribed" were inserted by Act 11 of 1915, and the words in italics in the same sub-section have been inserted by the Companies (Amendment) Act, 1936. See Introduction.

High Court's power to make rules.

The power of the High Court of making rules under this section was limited to making rules concerning the mode of proceeding to be had for winding up a company and for giving effect to the provisions as to reduction of capital and sub-division of shares. For the purpose of regulating the costs in other proceedings in company matters recourse must be had to rules framed by the High Court under the rule-making powers under the High Courts Act 1. But now by the amendment power has been given to make rules *generally* for all applications under this Act.

Sub-s. (2). As to cl. (a) see ss. 174, 183, 223 and 239.
„ cl. (b) „ s. 184.
„ cl. (c) „ s. 185.
„ cl. (d) „ s. 187.
„ cl. (e) „ s. 191.

Removal of defunct Companies from Register.

Registrar may strike defunct company off register.

247. (1) Where the registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the [*Official Gazette*] with a view to striking the name of the company off the register.

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1. Damodar &c. Co. v. Nagin Das [1915] 17 Bom. L. R. 207, 39 Bom. 383.

(3) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the [*Official Gazette*], and send to the company by post a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the [*Official Gazette*] and send to the company a like notice as is provided in the last preceding sub-section.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the [*Official Gazette*], and, on the publication in the [*Official Gazette*] of this notice, the company shall be dissolved: Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struct off the register, the Court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the stricking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director, manager or other officer

of the company, or, if there is no director, manager or other officer of the company whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Amendment. In sub-ss. (2), (3), (4) and (5) of this section the words in italics within square brackets have been substituted for "lccal Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Companies removed from register.

"Companies which have never commenced operation or have ceased to carry on business and have no assets to divide, are frequently disposed of (without winding up) under the section. In 1923 in England and Wales 1503 companies were in this manner removed from the register, as against 8008 registered and 2859 wound up during the year" 1.

When a company is still in operation.

A company which is in the course of being wound up voluntarily is still in operation within the meaning of the section 2. A company, although not carrying on business, may be in operation 3.

Restoration.

The power given to the Court to restore to the register the name of a company which has been struck off by the registrar applies to the case of a company which at the time of the striking off was carrying on business only for the purpose of winding up voluntarily and realizing its assets 4.

Effect.

If a company is struck off the register under this section, the personal liability of its officers for engagements made as its agents is preserved 5, and it may be enforced as if the company had not been dissolved. On the application for restoration of the name the Court has no power to impose a penalty as a condition of making the order 5. As to the title of the petition and the terms on which an order will be made see the case noted below 6.

Third party.

A third party has no *locus standie* to oppose a company's application for restoration under this section, but he may be heard as *amicus curie* if the Court so pleases 7.

Sub-s. (6). An order passed under sub-s. (6) refusing to restore a company is not made in the matter of winding up and hence is not appealable; but where the order is based on an erroneus view of the law it is open to revision 8. The registrar is not bound to remove a company from the register, even though an application be made for the purpose, on discovering that the company is not functioning or that its members have been reduced to less than seven 8. Where the object of the application to the registrar under this section is to avoid liability in a suit pending against the company, the

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1. Gore-Browne's Joint Stock Companies, 36th ed. p. 618.
2. Outlay Assurance Society [1887] 34 Ch. D. 479; Financial Corpn. [1883] 27 Sol. Jo. 199; Langlaagte Proprietory Co. [1912] 28 T. L. R. 529.
3. Estates Investment Co. [1883] 27 Sol. Jo. 585; Central India Mining Co. v. Société Coloniale [1920] 1 K. B. 753.
4. See note 2 supra.
5. Brown Bayley's Steel Works [1905] 21 T. L. R. 374.
6. Johannesburgh Mining Synd. [1901] W. N. 46; Brown Bayley's Steel Works (supra); Walter Wright, Ltd. [1923] W. N. 128, 67 Sol. J. 577.
7. Conrad Hall & Co. [1916] W. N. 275.
8. Surjan Das v. Chabba Cotton Co. [1925] L. 443, 86 I. C. 652, 26 P. L. R. 68.

application must be rejected. If the application is granted by the registrar, the order is liable to be set aside by the Court.

Where an application was made by a shareholder under this clause for setting aside an order of the registrar and made him alone a party to the application and the Court set aside the order of the registrar, it was held that in view of O. 29 rr. 1 and 2, C. P. C. read with s. 141 C. P. C. the company could not be said to have been properly represented by the registrar as the only person who could legally put in appearance on behalf of the company would either be its secretary or one of its directors, though he was no party to the original proceedings. A director can apply for review of such an order [1].

As to the power of the Court to wind up a company which does not commence its business within a year from its incorporation or suspends its business for a whole year, see s. 162 (iii) and notes thereto.

Limitation.

An application for winding up a company dissolved under this section may be made within three years of its dissolution [2]. In the last cited case it was held that Art. 181 of the Limitation Act applies to such a case, although it has been held in a long series of cases that Art. 181 of the Limitation Act is restricted to applications made under the Code of Civil Procedure [3].

PART VI.

REGISTRATION OFFICE AND FEES.

Registration offices.

248. (1) For the purpose of the registration of companies under this Act, there shall be offices at such places as the [*Central Government*] thinks fit, and no company shall be registered except at an office within the province in which, by the memorandum, the registered office of the company is declared to be established.

(2) The [*Central Government*] may appoint such registrars and assistant registrars as it thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(3) The salaries of the persons appointed under this section shall be fixed by the [*Central Government*].

(4) The [*Central Government*] may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(5) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the [*Central Government*] not exceeding one rupee for each inspection; and any person may require a certificate of the incorpora-

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1. Kawdu v. Berar Ginning Co. [1929] N. 185, 116 I. C. 427.
2. Kawdu v. Berar Ginning Co. [1928] N. 194, 109 I. C. 559.
3. See U. N. Mitra's Limitation Act. 6th ed. (1932) p. 1916.

tion of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar on payment for the certificate, certified copy or extract, of such fees as the [*Central Government*] may appoint, not exceeding three rupees for a certificate of incorporation, and not exceeding six annas for every hundred words or fractional part thereof required to be copied.

(6) Whenever any act is by this Act directed to be done to or by the registrar it shall, until the [*Central Government*] otherwise directs, be done to or by the existing registrar of joint-stock companies or in his absence to or by such person as the [*Central Government*] may for the time being authorise; but, in the event of the [*Central Government*] altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the [*Central Government*] may appoint.

Amendments.

In the several sub-sections of this sections the words "Central Government" in italics within square brackets have been substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937. But with effect from 1st April, 1938 the Central Government has entrusted to Provincial Governments its functions under this section—*vide* Gazette of India dated 26th March, 1938, Part I, p. 440.

Documents field with registrar to be evidence.

Sub-s. (5). The Commercial Documents Evidence Act XXX of 1939 which received the assent of the Governor General on 26th September, 1939 has provided as follows:—(1) The Court shall presume that copies certified by the registrar of Companies, of the memorandum or articles of association of a company filed under the companies Act, 1913 purporting to be such documents and to have been duly made by or under the appropriate authority, were so made and the statements contained therein are accurate; (2) the Court may presume that copies so certified of the balance-sheet, profit and loss account and audit report of the company filed with the said registrar under the Companies Act, 1913 and Rules made thereunder purporting to be such documents and to have been duly made by or under the appropriate authority, were so made and the statements contained therein are accurate—see s. 3 of the aforesaid Act XXX of 1939. The said Act has further provided that notwithstanding anything contained in the Indian Evidence Act, 1872, statements of facts in issue or of relevant facts, made in any of the above mentioned documents, as to matters usually stated in such documents shall be themselves relevant facts within the meaning of that Act—see s. 2 of the aforesaid Act XXX of 1939.

Fees.

249. (1) There shall be paid to the registrar in respect of the several matters mentioned in Table B in the First Schedule the several fees therein specified; or such smaller fees as the [*Central Government*] may direct.

(2) All fees paid to the registrar in pursuance of this Act shall be accounted for to the Crown.

Amendment. In sub-s. (1) of this section the words in italics within square brackets have been substituted for "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into force on 1st April, 1937.

The Act does not contemplate new articles of association, and where a company purports to adopt new articles of association, they are nothing but a special resolution and as such do not require to be stamped 1.

As to the smaller fees directed by the Central Government see the Notification No. 40(1)—Tr. (C. L.) 41, dated 23-8-1941 in Appendix E.

Enforcing submission of returns and documents to registrar.

249A. (1) *If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court by any member or creditor of the company or by the registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.*

(2) *Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.*

(3) *Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.*

This section has been inserted by the Companies (Amendment) Act, 1936. It reproduces s. 135 of the English Act, of 1929. See Introduction.

PART VII.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACT.

Application of Act to companies formed under former Companies Acts.

250. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee;

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1. New Egerton Woollen Mills [1899] 22 All. 131.

and, in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company :

Provided that—

(1) nothing in Table A in the First Schedule shall apply to a company formed and registered under Act XIX of 1857 and Act VII of 1860, or either of them, or under the Indian Companies Act, 1866, or the Indian Companies Act, 1882 ;

(2) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under Act No. XIX of 1857 and Act No. VII of 1860, or either of them, or under the Indian Companies Act, 1866, or the Indian Companies Act, 1882, as the case may be.

For definition of "existing company" see cl. (7), sub-s. (1) of s. 2 *ante*.

251. This Act shall apply to every company registered but not formed under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, or under the Indian Companies Act, 1866, or the Indian Companies Act, 1882, in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act :

Application of Act to companies registered but not formed under former Companies Acts.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the said Acts or any of them.

As to the application of the Act to companies registered but not formed under the Act see s. 266.

252. A company registered under Act XIX of 1857 and Act VII of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct.

Mode of transferring.

PART VIII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

253. (1) With the exceptions and subject to the provisions mentioned and contained in this section,—

Companies capable of being registered.

(*i*) any company consisting of seven or more members, which was in existence on the first day of May, eighteen hundred and eighty-two, including any company registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, and (*ii*) any company formed after the date aforesaid whether before or after the commencement of this Act, in pursuance of any Act of Parliament or Act of the [*Central Government*] other than this Act, or of Letters Patent, or being otherwise duly constituted according to law, and consisting of seven or more members ;

may at any time register under this Act as an unlimited company or as a company limited by shares, or as a company limited by guarantee ; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up :

(2) Provided as follows :—

(*a*) a company having the liability of its members limited by Act of Parliament or Act of the [*Central Government*] or by Letters Patent, and not being a joint-stock company as hereinafter defined, shall not register in pursuance of this section ;

(*b*) a company having the liability of its members limited by Act of Parliament or Act of the [*Central Government*] or by Letters Patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee ;

(*c*) a company that is not a joint-stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares ;

(*d*) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose ;

(*e*) where a company not having the liability of its members limited by Act of Parliament or Act of the [*Central Government*] or by Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting ;

(*f*) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(3) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the articles.

(4) A company registered under the Indian Companies Act, 1882, shall not be registered in pursuance of this section.

Amendment. In cl. (ii) of sub-s. (1) and cls. (a), (b) and (e) of sub-s. (2) of this section the words in italics within square brackets have been substituted for "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into force on 1st April, 1937.

Partnership.

A partnership formed solely for the purpose of being incorporated under the Act in order that it may be forthwith wound up cannot be registered under this section [1].

Sub-s. (1), cl. (ii). A tramway company created by a private Act of Parliament, incorporating the English Companies Clauses Act, was closed down, and after being registered under Part IX of the English Act of 1929 (corresponding to Part VIII of the Indian Act) was voluntarily wound up. The liquidator took out a summons to determine *inter alia*, the rights of the debenture-holders as against the unsecured creditors and the extent of the charge created by the debentures. It was held that the tramway company having altogether ceased to exist as a going concern, the debenture-holders were entitled to a charge on all the assets including proceeds of sale of realized assets and uncalled capital, in priority to the claims of unsecured creditors [2].

A joint-stock company has been defined in the next following section.

Registration after presentation of a winding up petition is a nullity [3].

By registration a company may acquire powers which it did not possess before [4].

Definition of "joint-stock company."

254. For the purposes of this Part as far as relates to registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock,

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1. Ex. p. Johnston [1891] 2 Q. B. 598.
2. Glen Valley Tramway Co. [1937] 1 Ch. 465.
3. Hercules Insurance Co. [1871] 11 Eq. 321.
4. Southall v. British Mutual Society [1870] 6 Ch. App. 614.

and no other persons ; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

Requirements for registration by joint-stock companies.

255. Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the registrar the following documents (that is to say) :—

(1) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number ;

(2) a copy of any Act of Parliament, Act of the [*Central Government*], Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company ; and

(3) if the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say) :—

(*a*) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists ;

(*b*) the number of shares taken and the amount paid on each share ;

(*c*) the name of the company, with the addition of the word "Limited" as the last word thereof ; and

(*d*) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

In sub-s. (2) of this section the words in italics within square brackets have been substituted for "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

Requirements for registration by other than joint-stock companies.

256. Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the registrar—

(1) a list showing the names, addresses and occupations of the directors of the company ; and

(2) a copy of any Act of Parliament, Act of the

[*Central Government*], Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company ; and

(3) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

In sub-s. (2) of this section the words in italics within square brackets have been substituted for "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

Authentication of statement of existing companies.

257. The list of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

258. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as hereinbefore defined.

On registration of banking company with limited liability, notice to be given to customers.

259. (1) Where a banking company, which was in existence on the first day of May eighteen hundred and eighty-two, proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain companies from payment of fees.

260. No fees shall be charged in respect of the registration in pursuance of this Part of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some Act of Parliament or Act of the [*Central Government*] or by Letters Patent.

See notes to s. 256, supra.

261. When a company registers in pursuance of this Part with limited liability, the word "Limited" shall form and be registered as part of its name.

Addition of "Limited" to name.

262. On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal.

Certificate of registration of existing companies.

The certificate of the registrar is conclusive evidence that the company was authorized to be registered 1. See s. 23 and notes thereto.

263. All property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Vesting of property on registration.

264. The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration.

Saving of existing liabilities.

If a previously unlimited company has been registered with a limited liability, a member, inspite of the terms of his agreement before registration, is not liable to contribute beyond the amount of his shares 2. A member of an unregistered company which is registered under this Part after the member has parted with all his shares is not a contributory 3.

Contributory.

265. All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit or proceeding;

Continuation of existing suits.

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1. Hammond v. Prentice Bros. [1920] 1 Ch. 201.
2. Sheffield &c. Society [1865] 12 L. T. 335; see also Lethbridge v. Adams [1872] 13 Eq. 547.
3. Lanyon v. Smith [1863] 3 B. & S. 938.

but, in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

266. When a company is registered in pursuance of this Part—

Effect of registration under Act.

(*i*) all provisions contained in any Act of Parliament, Act of the [*Central Government*], deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidence as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles ;

(*ii*) all the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say) :—

(*a*) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution ;

(*b*) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered ;

(*c*) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or Act of the [*Central Government*] relating to the company ;

(*d*) subject to the provisions of this section, the company shall not have power, without the sanction of the [*Central Government*], to alter any provision contained in any Letters Patent relating to the company ;

(*e*) the company shall not have power to alter any provision contained in a Royal Charter or Letters Patent with respect to the objects of the company;

(*f*) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply;

(*iii*) the provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any Act of Parliament, Act of the [*Central Government*], Royal Charter, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company;

(*iv*) nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act ;

(*v*) nothing in this Act shall derogate from any lawful power of altering its constitution or regulations which may, by virtue of any Act of Parliament, Act of the [*Central Government*], deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, be vested in the company.

Amendment. In the several clauses of this section the words in italics within square brackets have been substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

Pre-existing liability. Where a member of an unregistered company who is personally liable to be sued for the price of goods supplied to the company has parted with his shares before registration, he is not, by reason only of the registration, released from his pre-existing liability 1.

See notes to s. 253 *ante*.

Power to substitute memorandum and articles for deed of settlement.

267. (1) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section with the following modifications :—

(*a*) there shall be substituted for the printed copy of the altered memorandum required to be filed with the registrar a printed copy of the substituted memorandum and articles ; and

(*b*) on the registration of the alteration being certified by the registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles,

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1. Lanyon v. Smith [1863] 3 B. & S. 938 ; Harvey v. Clough [1863] 8 L. T. 324.

and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company, not being an Act of Parliament, an Act of the [*Central Government*], a Royal Charter or Letters Patent.

Amendment. In sub-s. (4) of this section the words in italics within square brackets have been substituted for "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into force on 1st April, 1937.

For the provisions of this Act with respect to confirmation by the Court and registration of an alteration of objects see s. 12 *et seq.*

Special resolution must be confirmed by Court.

Where a company constituted by a deed of settlement has passed a special resolution to alter the form of its constitution by substituting a memorandum and articles of association for the deed of settlement pursuant to this section, the special resolution must be confirmed by the Court under this section even if the memorandum does not make any change in the objects of the company 1.

Procedure, conditional notice is not sufficient.

The proposed resolution in such a case should be described as a special resolution and copies of the resolution and the proposed memorandum and articles of association should be sent with the notice of the meeting to the shareholders or, if previously sent, should be referred to 2. The conditional notice that "if passed, the resolution would be submitted to another general meeting at a specific place and date for final determination and approval" is not sufficient 3.

Confirmation by Court.

A company, having power to amalgamate with any other company with similar objects under a contract of co-partnery which formed its constitutive writ, presented a petition craving the Court to confirm an alternative of its form of constitution by substituting for the contract of co-partnery a memorandum and articles of association which had been adopted by a special resolution and to confirm an extention of its objects. The memorandum included among other objects power to "sell, transfer or dispose of the undertaking, property and rights heritable or moveable, real or personal and business of the company or any part thereof" : it was held that the alterations made should be confirmed in so far as they conferred power to "sell......business of the company" 4.

See notes to s. 13.

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1. Braintree & Bocking Gas Co. [1920] 2 Ch. 12.
2. North of England &c. Navigation Co. [1920] S. C. 94, 52 Sc. L. R. 117.
3. *Ibid* [Alexander v. Simpson (1890) 43 Ch. D. 139 applied].
4. Aberdeen Steam Navigation Co. [1919] 56 Sc. L. R. 343, [1919] S. C. 464.

Power of Court to stay or restrain proceedings.

268. The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

As to the provisions for staying and restraining proceedings against a company at any time after the presentation of a petition to wind up before the winding up order, see s. 169 and notes.

Suits stayed on winding up order.

269. Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

Suit by company will not be stayed.

This section is intended to apply not to suits or other legal proceedings brought by the company, but to a suit or proceeding brought by a third person against either the company or a contributory. There is no reason why a suit brought by the company should not proceed inspite of an order for winding up made after the commencement of the suit [1].

Effect of dismissal.

Dismissal of a suit instituted after the registered company has gone into liquidation does not bar the maintenance of a claim before the official liquidator [2].

Compare s. 171 and see notes to that section.

PART IX.

WINDING UP OF UNREGISTERED COMPANIES.

Meaning of "unregistered company."

270. For the purposes of this Part, the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament or by an Act of the [*Central Government*], nor a company registered under the Indian Companies Act, 1866, or under any Act repealed thereby, or under the Indian Companies Act, 1882, or under this Act, but save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

Amendment. In this section the words in italics within square brackets have been substituted for "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into force on 1st April, 1937.

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[1] Rup Ram v. Fazul Din [1920] 57 I. C. 223.

[2] Peary Lal v. Porter [1914] 24 I. C. 99.

Applicability.

A company whose principal object is the construction of docks, but the company has power also to make a branch railway, does not come within the exception 1. A tramway company incorporated by a special Act is not a "railway company" and may be wound up 2.

Meaning of "more than seven members."

The words "more than seven members" mean at least eight existing members, and for this purpose representatives of deceased members, trustees of bankrupt members and past members cannot be counted 3. Mr. Justice Cunliffe of the Rangoon High Court ordered a company consisting of not more than seven persons to be wound up under this section holding that the English decisions mentioned in the last note took a narrow view of the language 4. With all respect it is submitted that this decision is not correct. In a later case Page C. J., and Mosely J., of the same High Court held that under this section and the following section the Court can order the winding up of a partnership, association or company if, and only if, at the time when the petition for the winding up is presented it consists of more than seven persons 5.

Meaning of "company."

The first part of this section gives definition of the expression "unregistered company." The second part does not tell what bodies will fall within the expression, but some particular kinds of bodies would be included. The section is not exhaustive. The words "shall include" do not amount to "shall mean and include" 6. Therefore "company" in this part of the section can only mean a body which has no corporate existence, not being registered under the Act. But a foreign company is a corporate body and a legal entity and under the law it can sue and be sued as such. The words "shall include" will not exclude a foreign company not registered under the Act, and such a company must fall within the expression "unregistered company" whatever may be the number of members 6.

Meaning of "unregistered company."

An unregistered company means a company unregistered at the date of the commencement of the winding up. Registration subsequent to that date is a nullity 7. It must consist of *more* than seven members, not "seven or more" as in s. 5.

Jurisdiction.

The High Court has jurisdiction to wind up an unregistered foreign company irrespective of the number of its members under this and the following section, and the mere fact that the order for winding up the company has been made by a competent Court of the place of the company's incorporation cannot make any difference to the jurisdiction 8.

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1. Exmouth Docks Co. [1873] 17 Eq. 181; but see Great Northern Ry. Co. v. Tahourdin [1884] 13 Q. B. D. 320; East and West India Dock Co. [1888] 38 Ch. D. 576; see also [1888] 39 Ch. D. 524.
2. Brentford Tramway Co. [1884] 26 Ch. D. 527; see also Isle of Wight Ferry Co. [1861] 2 H. & M. 597.
3. Bowling & Welby's Contract [1895] 1 Ch. 663; see also Bolton B. Loan Co. [1879] 12 Ch. D. 679; South London Fish Market Co. [1888] 39 Ch. D. 324.
4. In the matter of the Companies Act [1930] R. 337, 8 Rang. 409, 127 I. C. 736.
5. V. E. R. M. Chettyar Firm v. Hormasji [1931] R. 77, 8 Rang. 658, 131 I. C. 497.
6. Strauss & Co [1937] B. 15, 38 Bom. L. R. 1083.
7. Hercules Insurance Co. [1871] 11 Eq. 321.
8. Strauss & Co. (supra); see also Travancore National &c. Bank [1939] M 318.

271. (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions :—

Winding up of unregistered companies.

(i) an unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in the province where its principal place of business is situate or, if it has a principal place of business situate in more than one province, then in each province where it has a principal place of business ; and the principal place of business situate in that province in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company ;

(ii) no unregistered company shall be wound up under this Act voluntarily or subject to supervision ;

(iii) the circumstances in which an unregistered company may be wound up are as follows (that is to say) :—

(a) if the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs ;

(b) if the company is unable to pay its debts ;

(c) if the Court is of opinion that it is just and equitable that the company should be wound up ;

(iv) an unregistered company shall, for the purposes of this Act, be demeed to be unable to pay its debts—

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor ;

(*b*) if any suit or other legal proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same ;

(*c*) if execution or other process issued on a decree or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied ; and

(*d*) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

(3) *Where a company incorporated outside British India which has been carrying on business in British India ceases to carry on business in British India it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.*

Amendment. By the Companies (Amendment) Act, 1936, the new sub-s. (3) has been added following the provisions of sub-s. (2) of s. 338 of the English Act of 1929.

Jurisdiction. The Court has jurisdiction under the section to wind up companies incorporated by a special Act and foreign companies having a place of business in this country 1, even if the company has ceased to exist 2. If there is no member, officer or servant of the company on whom the petition to wind up can be served, the service must according to Companies' Winding up Rules be made by leaving a copy at the company's last known principal place of business within the jurisdiction 2. But when a foreign company is already in the course of being wound up in the country where it was domiciled, the winding up here is ancillary to the foreign liquidation, and the power of the liquidator is restricted to dealing with assets in this country 3. Where there is jurisdiction to wind up a foreign company at the time the petition is made, any subsequent order in the foreign country to wind up the company does not affect the former proceedings 3. See notes to s. 270 *ante*.

Scheme under s. 153. A scheme under s. 153 provides an alternative mode of winding up a company. It is a provision with respect to avert a winding up and is therefore a provision with respect to winding up within the meaning of this section 4.

The Court however has no jurisdiction to wind up a foreign company which has agents but no office in this country 5, or an illegal association 6, or a club 7, or a literary or scientific institution not established for the purpose of carrying on business 8, or a trade union 9, or an association of less than eight members 10.

"Carrying on business only for the purpose of winding up." Where an unregistered company has large outstandings which it would take years to work out and is not insolvent, the mere fact that it has ceased to take new business cannot be construed as carrying on business for the purpose of winding up its affairs and would not, on that ground only, justify a winding up order by the Court 11.

"Just and equitable." So long as a society, formed for the mutual assurance of life, is solvent and in a position to do all that it has undertaken to do, it will not be just and equitable, even if it were the wish of the majority of the shareholders, to wind it up against the wishes of the minority 12. For other cases see notes to s. 162 (vi).

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1. North of England Assn. [1900] 1 Ch. 481 ; Mercantile Bank of Australia [1892] 2 Ch. 204 ; Syria-Ottoman Ry. Co. [1904] 20 T. L. R. 217 ; Russian & English Bank [1932] 1 Ch. 663.
2. Tea Trading Co. [1933] 1 Ch. 647 ; Russian Bank [1933] Ch. 745 ; Russian & English Bank v. Baring Bros. & Co. [1936] 154 L. T. 603 (H. L.)
3. Victoria Society [1913] 1 Ch. 167.
4. Travancore National &c. Bank [1939] M. 318.
5. Lloyd Generale Italiano [1885] 29 Ch. D. 219.
6. Padstow Total Loss &c. Assn. [1882] 20 Ch. D. 137.
7. St. James's Club [1852] 2 De G. M. & G. 383.
8. Bristol Athenaeum [1889] 43 Ch. D. 236 ; but see Russel Institution [1898] 2 Ch. 72 ; re Jones [1898] 2 Ch. 83.
9. The Trade Union Act (Eng.) 1871, s. 5 ; S. 14, Indian Trade Unions Act, XVI of 1926.
10. Bolton B. B. Society [1879] 12 Ch. D. 679.
11. Victoria Society (supra).
12. Equitable Assurance Society [1909] 2 I. C. 164.

Companies wound up under this section.

A telegraph company 1, a water works company 2, an exhibition company 3, and a canal company 4, incorporated by special Acts have been wound up. A friendly society registered or unregistered may be wound up under this section 5.

Sub-s. (1) (iii) (a). The words, "is dissolved" are equivalent to "has been dissolved" 6.

Sub-s. (1), (iv). Compare s. 163 *ante*. See also notes to that section. For the meaning of "under his hand" in cl. (a) see notes to s. 163 *ante*.

Sub-s. (3). If a foreign company which after carrying on business in this country has been dissolved in the country of its incorporation, it may, notwithstanding its dissolution in that country be wound up as an unregistered company under this section, although the dissolution took place before the passing of this new sub-s. (3), and on the instruction of the liquidator with the approval of the Committee of Inspection, an action may be brought in the name of the foreign company to recover sums which at the date of its dissolution were due to the company and unpaid 7. Where a company has ceased to exist by an act of the country, by whose acts and under whose laws it was made a juristic entity, it must be treated as non-existent by all Courts administering English law 8. Such a company can be wound up in this country 9.

Contributories in winding up of unregistered companies.

272. (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of any contributory dying or being adjudged insolvent, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and to the assignees of insolvent contributories shall apply.

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1. Electric Telegraph Co. [1855] 22 Beav. 471.
2. Barton &c. Water Co. [1889] 42 Ch. D. 585 ; St. Neots Water Co. No. 2 [1906] 22 T.,L. R. 478.
3. Saunders v. Beavan [1912] 28 T.L.R. 518, [1911] W.N. 74, 104.
4. Basingstoke Canal [1886] 14 W. R. 956 ; see also Woking Canal [1914] 1 Ch. 300 317.
5. 20th Century Friendly Society [1910] W.N. 236 ; Victoria Society [1913] 1 Ch. 167 ; Iron Founders' Social Institute [1923] W. N. 127.
6. Russian & English Bank, supra ; Family Endowment Society [1870] 5 Ch. App. 118, 136.
7. Russian & English Bank v. Baring Brother [1936] A.C. 405, 154 L. T. 603.
8. Dairen Kisin K. Kaisha v. Shiang Kee [1941] P. C. 88, 196 I. C. 414 following Lazard Bros. & Co. v. Midland Bank [1933] A. C. 289 (298).
9. Ibid, approving Russian & English Bank [1933] 1 Ch. 745.

Who is not a contributory. A debtor to the company is not a contributory within the above definition and must not be settled on the list of contributories [1]. For the meaning of the word "contributory" in the winding up of registered companies see s. 158.

Sub-s. (2). Compare s. 160.

Power to stay or restrain proceedings. **273.** The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

For the provisions for staying and restraining suits and legal proceedings against a company see s. 169 and notes thereto. Cf. s. 268.

Suits stayed on winding up order. **274.** Where an order has been made for winding up an unregistered company, no suit or other legal proceedings shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

See s. 171 and notes. Cf. s. 269.

Applicability. This section only applies to actions brought against contributories as such to enforce payment of a debt of the company [2].

Directions as to property in certain cases. **275.** If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order, or by any subsequent order, direct that all or any part of the property, moveable or immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

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[1] British Nation Life Assurance Assn. [1878] 8 Ch. D. 679 at p. 708; Lee & Moor's case [1868] 5 Eq. 368.

[2] South of France Pottery Syndicate [1877] 36 L. T. 651, 37 L. T. 260.

Personal right or liability. If the property of the company is vested in the official liquidator under this section, he does not thereby acquire any personal rights or liabilities 1. A vesting order under this section can be obtained on an *ex parte* motion 2, but the trustee in whom the property is vested may be served 3.

Provisions of this Part cumulative. **276.** The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

Scope of the section. The words "except in the event of its being wound up" include the time when a petition is pending 4. This section renders inapplicable to unregistered companies the whole of the Act except Part V 4.

PART X.

COMPANIES ESTABLISHED OUTSIDE BRITISH INDIA.

Requirements as to companies established outside British India. **277.** (1) Every company incorporated outside British India, which at the commencement of this Act has a place of business in British India, and every such company which after the commencement of this Act establishes such a place of business within British India, shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar in the province in which such place of business is situated,—

(*a*) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;

(*b*) the full address of the registered or principal office of the company;

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1. Graham v. Edge [1888] 20 Q. B. D. 538; C.A. 683.
2. Albert Life Asurance Co. [1869] 18 W.R. 91.
3. Britannia Building Society [1890] W.N. 170, 63 L.T. 304.
4. Rudow v. Great Britain Mutual Society [1881] 17 Ch. D. 600; see also Ex. p. Ball [1873] 10 Ch. App. 48.

(*c*) a list of the directors and managers (if any) of the company ;

(*d*) the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company ;

[(*e*) *the full address of that office of the company in British India which is to be deemed the principal place of business in British India of the company* ;]

and, in the event of any alteration being made in any such instrument [*or in any such address*] or in the directors or managers or in the names or addresses of any such persons as aforesaid, the company shall, within the prescribed time, file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar of the province in which the company has its principal place of business—

(*i*) in a case where by the law, for the time being in force, of the country in which the company is incorporated such company is required to file with the public authority an annual balance-sheet,—[*three copies of that balance-sheet*] *and if the balance-sheet does not contain all the information provided for in the form marked H in the Third Schedule, such supplementary statements* [*in triplicate*] *as shall furnish such information* ; or

(*ii*) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated,—such a statement [*in triplicate*] in the form of a balance-sheet as such company would, if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act :

* * * * * *

(4) Every company to which this section applies and which uses the word "Limited" as part of its name, shall—

(*a*) in every prospectus inviting subscriptions for its shares or debentures in British India, state the country in which the company is incorporated; and

(*b*) conspicuously exhibit on every place where it carries on business in British India the name of the company and the country in which the company is incorporated in letters easily legible in English characters and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place; and

(*c*) have the name of the company and of the country in which the company is incorporated mentioned in legible English characters in all bill-heads and letter paper, and in all notices, advertisements and other official publications of the company.

(5) *Every company to which this section applies shall if the liability of the members of the company is limited cause notice of that fact to be stated in legible characters in every prospectus inviting subscriptions for its shares, and in all bill-heads and letter paper notices, advertisements and other official publications of the company in British India, and to be affixed on every place where it carries on business.*

(6) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

(7) For the purposes of this section—

(*a*) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(*b*) the expression "place of business" includes a share transfer or share registration office;

(*c*) the expression "director" includes any person occupying the position of director, by whatever name called; and

(*d*) the expression "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(8) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

Amendment.

By the Companies (Amendment) Act, 1936, in sub-s. (3) the words in italics have been inserted and the proviso thereto has been omitted. By the said Act the original sub-sections (5), (6) and (7) have been re-numbered as sub-sections (6), (7) and (8) respectively and the new sub-s. (5) has been inserted. The proviso to sub-s. (3) was as follows :—

Provided that the Governor General in Council may, by notification in the Gazette of India subject to such restrictions and conditions, if any, as he may therein prescribe, exempt any such company or any class of such companies from this requirement.

By the amending Act II of 1938 the following further amendments have been made in this section : In sub-s. (1) the new cl. (e) has been added, and after that the words within square brackets have been substituted for the words "or in such address." In sub-s. (3), cl. (i) the words within the first square brackets have been substituted for "a copy of that balance-sheet," and the words "in triplicate" in the second square brackets have been inserted. In cl. (ii) the words "in triplicate" within square brackets have also been inserted by the same amending Act.

Applicability.

A company incorporated in Canada and not having established places of business within the United Kingdom was not bound to conform to the regulations contained in the corresponding section (s. 274) of the English Act of 1908 [1].

Where a foreign company had a place of business within the United Kingdom within the meaning of the corresponding section (274) of the English Act of 1908, a service upon the person named in cl. (d) of sub-s. (1) was an effective service [2].

English & foreign corporations.

An English corporation is none the less English because the corporators are foreigners [3], and a foreign corporation is none the less foreign because the corporators are English [4].

Carrying on business.

It cannot be said that a foreign company cannot carry on business in another country. Where a company incorporated outside British India does business in Calcutta through its agents, the company is carrying on business in British India within the meaning of cl. 12 of the Letters Patent, Calcutta [5], and it may be sued there [6].

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[1] Lord Advocate v. Huron &c. Savings Co. [1911] S. C. 612.

[2] Sabatier v. Trading Co. [1927] 1 Ch. 495 ; Employers' Liability Assurance Corporation v. Sedgwick, Collins & Co. [1927] A. C. 95.

[3] General Co. for Promotion of Land Credit [1870] 5 Ch. App. 363 ; Attorney General v. Jewish Colonization Assn. [1901] 1 K. B. 123, 130.

[4] Janson v. Driefontein Mines [1902] A. C. 484, 497 ; Gramophone Ltd. v. Stanley [1908] 2 K. B. 89.

[5] Guardian Assurance Co. v. Thakur Shiva Mangal [1937] A. 208, [1937] All. 234, [1937] A. L. J. 98.

[6] See La Compagnie Generale v. Thomas Law & Co. [1899] A. C. 431 ; Dunlop Pneumatic Tyre Co. v. Actien Gesellschaft Fur Motor &c. Co. [1902] 1 K. B. 342 ; Saccharin Corpn. v. Chemische Fabrikoc [1911] 2 K. B. 516.

Sub-s. 1. As to certification of documents under this sub-section see Rule (6) of the Indian Companies Rules, 1941 printed in App. E. As to certification of translations under ss. 277 and 277 B, see Rule (7), *ibid.* For power of the Central Government to relax Rules (6) and (7) see Rule 8, *ibid.* As to the time for filing alterations of particulars under this sub-section, see Rule 9, *ibid.*

Sub-s. 3, cl. (ii). As to the form of balance-sheet, see Form F in the Third Schedule, *post.*

Sub-ss. 4 & 5. Compare s. 73 *ante* and see notes to that section.

Sub-s. (6). A company which is registered in a foreign State is entitled to file suits and maintain actions in British India, and the mere fact that it has not complied with the requirements of this section does not disable it from filing suits and maintaining actions in British India. This section merely imposes a penalty for not complying with its provisions. A company in a foreign State does not cease to be a legal body merely because it does not comply with the requirements of this section [1].

Sub-s. 7. As to certification see notes to sub-s. (1), supra. As to the meaning of "prospectus", compare cl. (14), sub-s. (1) of s. 2. *ante*, and see notes to that clause and ss. 92 and 93 *ante.*

Restriction on sale and offer for sale of shares.

277A. (1) *It shall not be lawful for any person—*

(*a*) *to issue, circulate or distribute in British India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside British India whether the company has or has not established, or when formed will or will not establish, a place of business in British India, unless—*

(*i*) *before the issue, circulation or distribution of the prospectus in British India a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the registrar;*

(*ii*) *the prospectus states on the face of it that the copy has been so delivered;*

(*iii*) *the prospectus is dated; and*

(*iv*) *the prospectus otherwise complies with this Part; or*

(*b*) *to issue to any person in British India a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part:*

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a bona fide *invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.*

(2) *This section shall not apply to the issue to existing members*

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[1] Shamrao v. United H. B. & Engineering Co. [1937] B. 24, 38 Bom. L. R. 1092.

or debenture-holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside British India are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 98A to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding five thousand rupees.

(6) In this section and in section 277B, the expressions "prospectus", "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

Requirements as to prospectus.

277B. *(1) In order to comply with this Part a prospectus, in addition to complying with the provisions of sub-clauses (ii) and (iii) of clause (a) of sub-section (1) of section 277A, must—*

(a) contain particulars with respect to the following matters:—

(i) the objects of the company;

(ii) the instrument constituting or defining the constitution of the company;

(iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iv) an address in British India where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof in the English language certified in the prescribed manner, can be inspected;

(*v*) *the date on which and the country in which the company was incorporated ;*

(*vi*) *whether the company has established a place of business in British India and, if so, the address of its principal office in British India :*

Provided that the provisions of sub-clauses (*i*), (*ii*) *and* (*iii*) *of this clause shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business :*

(*b*) *subject to the provisions of this section, state the matters specified in sub-section* (1A) *of section* 93 *and set out the reports specified in that section :*

Provided that—

(*i*) *where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed, and*

(*ii*) *in section* 93 *of this Act a reference to the articles of the company shall be deemed to be a reference to the constitution of the company.*

(2) *Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.*

(3) *In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—*

(*a*) *as regards any matter not disclosed, he proves that he was not cognisant thereof ; or*

(*b*) *he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or*

(*c*) *the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused :*

Provided that in the event of failure to include in a prospectus a statement with respect to the matters specified in clause (*n*) *of* *sub-section (1) of section 93, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.*

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

See notes to sub-s. (1) of s. 277 *ante*.

Restriction on canvassing for sale of shares.

277C. *(1) It shall not be lawful for any person to go from house to house offering shares of a company incorporated outside India for subscription or purchase to the public or any member of the public.*

(2) In this sub-section the expression "house" shall not include an office used for business purposes.

(3) Any person acting in contravention of this section shall be liable to a fine not exceeding rupees one hundred.

Registration of charges.

277D. *(1) The provisions of sections 109 to 117, both inclusive, and 120 to 125, both inclusive, shall extend to charges on properties in British India which are created and to charges on property in British India which is acquired after the commencement of the Indian Companies (Amendment) Act, 1936, by a company incorporated outside British India which has an established place of business in British India.*

[Provided that references in the said sections to the registrar shall be deemed to be references to the registrar of the province in which the principal place of business in British India of such company is situated, and references to the registered office of the company shall be deemed to be references to the principal place of business in British India of the company :

Provided further that, where a charge is created outside British India or the completion of the acquisition of property takes place outside British India, sub-clause (i) of the proviso to sub-section (1) of section 109 and the proviso to sub-section (1) of section 109A shall apply as if the property wherever situated were situated outside British India.

(2) This section shall be deemed not to have come into force until the commencement of the Indian Companies (Amendment) Act, 1938 :

Provided that where the provisions of sections 109 and section 117 to 120 have not been complied with in respect of any charge or mortgage created since the 15th day of January, 1937, as required by this Act, those provisions shall be complied with within four weeks *from the commencement of the Indian Companies (Amendment) Act, 1938*].

By the amending Act II of 1938 which received the assent of the Governor General on 26th February, 1938 (date of commencement), this section has been re-numbered as sub-section (1) and the matter within square brackets has been added thereto.

Notice of appointment of receiver.

277E. *The provisions of sections 118 and 119 shall* mutatis mutandis *apply to the case of all companies incorporated outside British India but having an established place of business in British India and the provisions of section 130 shall apply to such companies to the extent of requiring them to keep at their principal place of business in British India the books of account required by that section with respect to money received and expended, sales and purchases made, and assets and liabilities in relation to its business in British India.*

[Provided that references in the said section to the registrar shall be deemed to be references to the registrar of the province in which the principal place of business in British India of such company is situated, and references to the registered office of the company shall be deemed to be references to the principal place of business in British India of the company].

By the amending Act II of 1938 the proviso within square brackets has been added.

Sections 277A to 277E have been inserted by the Companies (Amendment) Act, 1936. Sections 277A and 277B reproduce ss. 354 and 355 and ss. 277C and 277D follow s. 90 of the English Act of 1929. See Introduction.

PART XA.

Banking Companies.

Definition of banking company.

277F. *A "banking company" means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, namely :—*

(1) *the borrowing, raising or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, travellers cheques and circular notes; the buying, selling and dealing in*

bullion and specie ; the buying and selling of foreign exchange including foreign bank notes ; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds ; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others ; the negotiating of loans and advances ; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise ; the collecting and transmitting of money and securities ;

(2) *acting as agents for Governments or local authorities or for any other person or persons ; the carrying on of agency business of any description other than the business of a managing agent [of a company not being a banking company] including the power to act as attorneys and to give discharges and receipts ;*

(3) *contracting for public and private loans and negotiating and issuing the same ;*

(4) *the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue ;*

(5) *carrying on and transacting every kind of guarantee and indemnity business ;*

(6) *promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise ;*

(7) *acquisition by purchase, lease, exchange, hire or otherwise of any property immoveable or moveable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability ;*

(8) *managing, selling and realising all property moveable and immoveable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims ;*

(9) *acquiring and holding and generally dealing with any property and any right, title or interest in any property moveable or immoveable which may form part of the security for any loans or advance or which may be connected with any such security ;*

(10) *undertaking and executing trusts ;*

(11) *undertaking the administration of estates as executor, trustee or otherwise :*

(12) *taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company ;*

(13) *establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons ; granting pensions and allowances and making payments towards insurance ; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object ;*

(14) *the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company ;*

(15) *selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company ;*

(16) *acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section ;*

(17) *doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.*

In clause (2) the words within square brackets have been added by the Amending Act II of 1938.

Limitation of activities of banking company.

277G. (1) *No company formed after the commencement of the Indian Companies (Amendment) Act, 1936, for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business the word "bank", "banker" or "banking" shall be registered under this Act, unless the memorandum limits the objects of the company to the carrying on of the business of accepting* *deposits of money on current account or otherwise subject to withdrawal by cheque, draft or otherwise along with some or all of the forms of business specified in section 277F.*

(2) No banking company whether incorporated in or outside British India shall after the expiry or two years from the commencement of the said Act carry on any form of business other than those specified in section 277F :

Provided that the [Central Government] may, by notification in the [Official Gazette], specify in addition to the business set forth in clauses (1) to (17) of section 277F other forms of business which it may be lawful under this section for a banking company to engage in.

Amendment. In the proviso to sub-s. (2) of this section the words within the first square brackets have been substituted for "Governor General in Council" and those within the second square brackets have been substituted for "Gazette of India" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Sub-s. (1). The date of commencement of the Indian Companies (Amendment) Act, 1936 is 15th January, 1937 (see the first page of Introduction).

Banking company not to employ managing agent.

277H. *No banking company shall after the expiry of two years from the commencement of the Indian Companies (Amendment) Act, 1936, employ or be managed by a managing agent other than a banking company for the management of the company.*

See notes to the previous section.

Restriction on commencement of business by banking company.

277I. *Notwithstanding anything contained in section 103, no banking company incorporated under this Act after the commencement of the Indian Companies (Amendment) Act, 1936, shall commence business, unless shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid up capital has been filed with the registrar.*

See notes to s. 277G.

Prohibition of charge on unpaid capital.

277J. *No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.*

Reserve fund.

277K. *(1) Every banking company shall, after the commencement of the Indian Companies (Amendment) Act, 1936, maintain a reserve fund.*

(2) Every banking company shall out of the declared profits of each year and before any dividend is declared transfer a sum equi-

valent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid up capital.

(3) A banking company shall invest the amount standing to the credit of its reserve fund in Government securities or in securities mentioned or referred to in section 20 of the Indian Trusts Act, 1882, or keep deposited in a special account to be opened by the company for the purpose in a scheduled bank as defined in clause (e) of section (2) of the Reserve Bank of India Act, 1934 :

Provided that the provision of the sub-section shall not apply to a banking company incorporated before the commencement of the Indian Companies (Amendment) Act, 1936, till after the expiry of two years from the commencement of the said Act.

Sub-s. (1). See notes to s. 277G.

Sub-s. (3). The securities mentioned or referred to in s. 20 of the Indian Trusts Act II of 1882 are—promissory notes, debentures, stock or other securities of any Provincial Government or of the Central Government or of the United Kingdom of Great Britain and Ireland, and also securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government.

For a list of the scheduled banks see pp. 286-87 *ante*.

Cash reserve.

277L. *(1) Every banking company shall maintain by way of cash reserve in cash a sum equivalent to at least one and a half per cent. of the time liabilities and five per cent. of the demand liabilities of such company and shall file with the registrar before the tenth day of every month [three copies of] a statement of the amount so held on the Friday of each week of the preceding month with particulars of the time and demand liabilities of each such day.*

(2) For the purposes of sub-section (1) "demand liabilities" means liabilities which must be met on demand, and "time liabilities" means liabilities which are not demand liabilities.

(3) Nothing in this section or in section 277K shall apply to a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934.

(4) If default is made in complying with the requirements of section 277G, section 277H, section 277J, section 277K or section 277M or with the requirements of this section as to the maintainance of a cash reserve, every director or other officer of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues, and if default is made in complying with the requirements of this section as to the filing of the statement referred to

in sub-section (1), to a fine not exceeding one hundred rupees for every day during which the default continues.

In sub-s. (1) the words in square brackets have been inserted by the amending Act II of 1938 which received the assent of the Governor General on 26th February, 1938.

Cash reserve.

Where the evidence does not warrant the conclusion that an ordinary director was knowingly and wilfully a party to the default to maintain the requisite cash reserve, a conviction of such director under this section must be set aside [1].

Restriction on nature of subsidiary companies.

277M. (1) *[A banking company shall not form any subsidiary company except a subsidiary company] formed for the purpose of undertaking and executing trusts, undertaking the administration of estates as executor trustee or otherwise and such other purposes set forth in section 277F as are incidental to the business of accepting deposits of money on current account or otherwise.*

[(2) Save as provided in sub-section (1), a banking company shall not hold shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding forty per cent. of the issued share capital of that company :

Provided that nothing in this sub-section shall apply to shares held by a banking company before the commencement of the Indian Companies (Amendment) Act, 1936.]

By the amending Act II of 1938 this section has been re-numbered as sub-s. (1) and therein the words within square brackets have been substituted for the words "A banking company shall not form or hold shares in any subsidiary company except a subsidiary company of its own". The sub-s. (2) has been added by the same amending Act.

For definition of subsidiary company see sub-s. 2 of s. 2 *ante.* As to the commencement of the Indian Companies (Amendment) Act, 1936, see notes to s. 277G.

Power of Court to stay proceedings.

277N. *(1) The Court may on the application of a banking company which is temporarily unable to meet its obligations make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper and may from time to time extend the period.*

(2) No such application shall be maintainable unless accompanied by a report of the registrar :

Provided, however, the Court may, for sufficient reasons, grant interim relief, even if the application is not accompanied by such report.

(3) The registrar shall for the purposes of his report be entitled at the cost of the company to investigate the financial condition of the

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[1] Neelakantan Nambisan [1940] 1 M. L. J. 478.

company and for such purpose to have the books and documents of the company examined by an accountant holding a certificate issued under section 144.

Amendment. The new Part XA consisting of ss. 277F to 277N has been introduced by the Companies (Amendment) Act, 1936, making special provisions applicable to banking companies. See Introduction.

Scope. The fact that the directors and the chairman of a banking company are actuated by the best of motives and they think and hope that their arrangements are those best suited to meet the liabilities of the company, is no ground in law for passing an order under this section, unless the Court really is satisfied that the position of the company is embarrassed only temporarily. It was never the intention of the legislature in enacting this section that a company in an insolvent position should be allowed to continue its operations under the protection of the Court and that those who had dealings with the company should be prevented under the orders of the Court from seeking legal remedies to which they would otherwise have been entitled [1].

PART XI.

SUPPLEMENTAL

Legal proceedings, offences, etc.

Cognizance of offences. **278.** (1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

(2) If any offence which by this Act is declared to be punishable by fine only is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

(3) Notwithstanding anything in the Code of Criminal Procedure, 1898, every offence against this Act shall, for the purpose of the said Code, be deemed to be non-cognizable.

Jurisdiction. This section does not appear in the English Act, and seems to have been badly drafted, for in a very recent case a Full Bench of the Allahabad High Court had seriously to consider whether a High Court has original jurisdiction to try an offence under the Companies Act [2]. Their Lordships observed: "All that section 278 lays down is that no Court of a grade inferior to that of certain Magistrates shall have power to try such offences. Sub-s. (2) refers to the Presidency towns of Calcutta, Madras and Bombay, and has no application to this High Court. It therefore follows that the Act does not mention any particular Court which would have jurisdiction to try offences under s. 85 and other sections of the Act" [3]. The

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1. Benares Bank, Ltd. [1939] A. 726.
2. Harish v. Kavindra [1936] A. 830, [1936] A. L. J. 1105.
3. Ibid at p. 831.

Companies (Amendment) Act, 1936, does not remedy the defect which has been overlooked by those who were responsible for the measure. The above Full Bench however held that the High Court had no original jurisdiction to try an offence under the Act. Their Lordships said: "The jurisdiction of the High Court referred to in s. 3 is obviously the jurisdiction exercised by virtue of the specific provisions of the Act and not a jurisdiction which may be invoked where merely a criminal offence is declared...... It is very difficult to say that s. 3 has specifically mentioned that the High Court would be the Court which should as a Court of first instance try persons who have been guilty of an offence committed on account of breaches of the provisions of the sections of the Act" [1].

Criminal proceedings.

In criminal proceedings also the summons must be served at the registered office of the company [2]. In *Lakshmana* v. *Emp.* [3] no opinion was expressed on the question whether a complaint signed by the registrar's clerk is properly instituted.

Sub-s. (3). It is true that offences under sub-section (5) of s. 4 and under s. 283 are non-cognizable and cannot be investigated by the police under Ch. XIV of the Code of Criminal Procedure; but the mere fact that the offences were wrongly investigated and sent up by the police is not an obstacle to their being tried by a Magistrate [4].

Who can complain ?

This section is silent as to the person on whose complaint the Court will take cognizance of an offence against this Act. Cognizance is generally taken on the complaint made by the registrar of companies, for by the regulations made under sub-s. (2) of s. 248 this officer has been authorized by the Local Governments to make such complaints. But these regulations are not intended to exclude any other competent party from filing a complaint. Such an exclusion would be *ultra vires* because there is no provision in the Act which detracts from the ordinary power of the aggrieved person to file a complaint. A shareholder for instance is such an aggrieved person [5]. The Act as amended by Act XXII of 1936 does not also contemplate prosecutions only by the Advocate General or Public Prosecutor and under it prosecutions by private individuals are not barred. S. 141A which provides for prosecutions by the Crown is limited to cases of fraud and comes into play only after a report under s. 138 has been made [6]. In the last cited case at p. 455 Henderson J. observed: "In the absence of any specific provision in the Act itself we cannot infer from a mere omission of a similar provision (as in s. 368 of the English Act of 1929—printed in the Appendix) in the Indian Act that the intention of the legislature was to bar private prosecutions. There was no doubt at all that such prosecutions were permitted by the old Act."

Offences under other Acts.

Where allegations against an insurer amount to offences both under the Companies Act and the Insurance Act IV of 1938, he should be prosecuted under the latter Act, and any prosecution under the Companies Act should be limited to matters which are offences under this Act [6].

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[1] Ibid at p. 831.

[2] Pearks, Gunston & Tee v. Richardson [1902] 1 K. B. 91.

[3] [1932] M. 497, 35 M. L. W. 661. See however Sidheswar v. Emp. [1911] 12 Cr. L. J. 596, 12 I. C. 972 and Emp. v. Shiv Das [1910] 11 Cr. L. J. 577, 8 I.C. 190.

[4] Dawson v. King [1939] R. 273.

[5] Laxmi Narayan v. Mahajan [1928] N. 186, 29 Cr. L. J. 581, 109 I. C. 597.

[6] Surendra v. Kalipada [1940] 44 C. W. N. 454.

Application of fines.

279. The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

Power to require limited company to give security for costs.

280. Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

When security may be ordered.

The fact that the company is in liquidation is *prima facie* a reason for ordering security to be given 1. The amount of security is usually an amount equal to the probable amount of costs payable 2. The Court may direct security to be given for costs up to a certain stage and allow the petition to be renewed 3.

When a liquidator brings an action for call against a contributory, he will be required to give security for the defendant's costs, unless the plaintiff can show that the company is able to pay costs 4; but a liquidator taking out a misfeasance summons will not be so required 5.

Where company plaintiff in cross suit.

Where a company is plaintiff in a cross suit it may not be required to give security, for a party who is really a defendent, though nominally a plaintiff, is not to be hampered in his defence 6.

Power of Court to grant relief in certain case.

281. (1) *If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the Court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.*

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1. Northampton Coal &c. Co. v. Midland Waggon Co. [1878] 7 Ch. D. 500; Pure Spirit Co. v. Fowler [1890] 25 Q. B. D. 235.
2. Imperial Bank of China v. Bank of Hindustan [1866] 1 Ch. App. 437.
3. Western of Canada Oil Co. v. Walker [1873] 10 Ch. App. 628.
4. Pure Spirit Co. v. Fowler (supra).
5. Strand Wood Co. [1904] 2 Ch. 1; Official Liquidator v. Liaquat [1933] A. 205, [1933] A. L. J. 199.
6. Accidental M. Ins. Co. v. Mercati [1867] 3 Eq. 200; cf. Neck v. Taylor [1893] 1 Q.B. 560; but see Washoe Mining Co. v. Ferguson [1866] 2 Eq. 371; Moscow Gas Co. v. International Financial Society [1872] 7 Ch. App. 225.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are the following :—

(a) directors of a company ;

(b) managers and managing agents of a company ;

(c) officers of a company ;

(d) persons employed by a company as auditors, whether they are or are not officers of the company.

Amendment.

By the Companies (Amendment) Act, 1936, this new section has been substitued for the original s. 281. The provisions of this section are fuller than those of the original section which was as follows :—

Power of Court to grant relief in certain cases.

281. If, in any proceedings before any Court against a director of a company for negligence or breach of trust, it appears to such Court that the director is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think proper.

Where section applies.

Although directors are not, properly speaking, trustees, they are treated as such in respect of the company's money which comes into their hands or is under their control, and are liable to make good the loss in case the money is misapplied or misappropriated, as if they were trustees. Thus directors have been held liable to replace dividends paid out of capital 1, money improperly paid to a promoter 2, and money applied *ultra vires* the company 3. This section however extends to a transaction in fact wholly *ultra vires* the company, but which the director acting on counsel's considered opinion honestly and reasonably thought to be *intra vires* 4. It is not however meant to cover gross neglect of a director's ordinary duties over a long series of years 5. A person ceased to be a director for not having acquired his qualification shares (see s. 85) within the time, but continued to act and be paid as a director until some time when he became aware of the defect. Subsequently having acquired the qualification shares he was re-appointed as a director. On a petition by him under this section it was held (1) that the Court had power under this section to relieve him against the penalties imposed under s. 85 and that in the circumstances the petitioner had acted honestly notwithstanding certain negligence, so he ought to be relieved from his liability ; (2) that in the absence of any evidence of the view taken by

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1. Oxford B. B. &c. Society [1887] 35 Ch. D. 502.
2. *Ex parte* Pelly [1882] 21 Ch. D. 492.
3. Faure Electric Accumulator Co. [1889] 40 Ch. D. 141.
4. Claridges Patent Asphalte Co. [1921] 1 Ch. 543.
5. Govind v. Rangnath [1930] B. 572, 54 Bom. 226, 32 Bom. L. R. 232.

the shareholders and the creditors as to the petitioner's liability to repay to the company the remuneration received by him as director, the Court ought not to exercise its jurisdiction to relieve him of such liability to the company 1.

Sub-s. (1). Sub-s. (1) makes the Court which hears the case the only Court which has jurisdiction to give relief in respect of the proceedings which has already been commened 2.

Liability of directors.

To render a director liable for negligence, it must be in business sense culpable or gross 3. He is not liable for mistakes or errors of judgment 4. In order to debit the directors with the unrealized amounts of decrees allowed to be time barred, it is necessary for the company to show that the amounts could have been recovered from the judgment-debtors and that the failure to do this was due to the negligence of the directors 5. Where the rate of interest on loan given by a director to the company was inpugned, but no attempt was made on behalf of the company to prove that the money of which the company was in urgent need could have been raised at any lower rate, it was held by the Judicial Committee that the rate of interest was proper 5. Where in disposing of the company's property the directors are guilty of a breach of trust, the absence of dishonesty or fraud being immaterial in such a case, they are not entitled to relief under this section 6.

Negligence.

After a director's death his estate remains liable for breach of trust 7, but not for negligence unless his estate has benefited by the neglect 8.

Section need not be specially pleaded.

This section need not be specially pleaded to enable a director to avail himself of the protection afforded by it 9; but the onus of proving that he acted honestly and reasonably and ought to be fairly excused is on the director seeking relief 10.

Wilful neglect or default.

An act or an omission to do an act is wilful where the person who acts, or omits to act, knows what he is doing and intends to do what he is doing; but if that act or omission amounts to a breach of that person's duty and therefore to negligence, he is not guilty of wilful neglect or default unless he knows that he is committing or intends to commit, a breach of duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of his duty 11.

"Wilful misconduct" has been defined by Lord Alverstone "as a misconduct to which the will is party as contra-distinguished from accident, and is far beyond any negligence, even gross or culpable negligence, and involves that a person wilfully misconducts himself who knows and appreciates that it is wrong conduct on his part in the existing circumstances to do, or to fail or omit to do (as the case may be) a particular thing, and yet intentionally does, or fails or omits to do it, or persists in the act, failure

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1. Barry & Staines Linoleum Ltd. [1934] 150 L. T. 254. See also Gilt Edge Safety Glass, Ltd. infra.
2. Gilt Edge Safety Glass, Ltd. [1940] Ch. 495.
3. Lagunas Nitrate Co. v. Lagunas Syndicate [1899] 2 Ch. 392.
4. Cullerne v. London & S. B. Society [1890] 25 Q. B. D. 485.
5. Guntur Cotton &c. Mills v. Venkatachalapati [1932] P. C. 244.
6. Peninsular Locomotive Co. v. Reed [1937] Pat. 293.
7. Ramskill v. Edwards [1885] 31 Ch. D. 100.
8. Phillips v. Homftay [1883] 24 Ch. D. 439.
9. Singlehurst v. Tapscott Steamship Co. [1899] W. N. 133.
10. See Smith v. Stuart [1897] 2 Ch. 583 ; Dive v. Roebuck [1909] 1 Ch. 328.
11. City Equitable Fire Insurance Co. [1925] Ch. 407 ; Forder v. Great Western Ry. Co. (infra) & Leeds City Brewery v. Platts [1925] Ch. 532 n.

or omission regardless of consequences or acts with reckless carelessness, not caring what the results of his carelessness may be" 1.

Sub-s. 2. As to the Court having jurisdiction see s. 3 (*ante*) and notes thereto. The Court would make an order under this sub-section granting the petitioner relief from future or apprehended claims in respect of a purely technical defect, the proceedings already commenced being expressly excepted from that order 2.

Apart from this section a similar provision in the articles is effective to protect a director from liability even for gross negligence 3.

Penalty for false statement.

282. Whoever in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False statement.

A statement may be false not only because of what it states, but also because of what it conceals, omits or implies 4. In the last cited case Avory J. after citing the observations of Lord Macnaghten in *Gluckstein* v. *Barnes* 5, of Lord Chelmsford in *Peek* v. *Gurney* 6, and of Lord Halsbury in *Aaron's Reefs v. Twiss* 7 said : "It is true that the opinions which I have read were expressed in civil proceedings, but we think that the principles laid down in them 8 are none the less applicable here, especially in view of the fact that in *Aaron's Reefs* v. *Twiss* Lord Halsbury expressed his view with regard to criminal as well as civil liability" 9. As observed by Lord Hewart C. J. in a recent case "in order to ascertain the question whether the document (prospectus) was false in all material particulars one may ask oneself this question : 'If the facts had been revealed or even clearly indicated would any man of sense have put his money into the scheme ?'" 10.

In the last cited case a prospectus was issued which purported to invite persons to become shareholders in an old established metal dealers' and broker's business which, with a view to obtaining capital for the development of its normal trade, desired to acquire two other similar businesses. The fact was not discolsed that one of the businesses proposed to be acquired had enormous future gambling commitments arising out of an attempt to corner the pepper market, and there was no reference whatever to pepper in the prospectus : it was held that the omision of the above facts rendered the prospectus false within the meaning of s. 84 of the Larceny Act, 1861. In this connection the following observation of Lord Hewart, Chief Justice of England, is of interest in view of the fact that Courts in this country are often inclined to reject a ruling on the ground that the facts are not on all fours : "On behalf of the appellants it is

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1. Forder v. Great Western Ry. Co. [1905] 2 K. B. 532, 535.
2. Gilt Edge Safety Glass, Ltd., supra.
3. See Brazilian Rubber Estate [1911] I Ch. 425 ; but see s. 86C.
4. King v. Kylsant (Lord) [1932] I K. B. 442.
5. [1900] A. C. 240, 250.
6. [1873] L. R. 6 H. L. 377, 386.
7. [1896] A. C. 273, 281.
8. See notes to ss. 93 and 100.
9. King v. Kylsant (supra) at p. 448.
10. R. v. Bishirgian [1936] 154 L. T. 499. C. A. at p. 502.

contended that the judgment of *Rex v. Kylsant* 1 does not apply. Of course the facts of this case are not identical with the facts in case of *Rex* v. *Kylsant*. The question is not whether the facts are identical : the question is whether the well-settled principle exhibited but not for the first time laid down in that case, apply. In our opinion they clearly apply here *a fortiori*" 2.

Where two of the five directors of a company did not carry out their undertaking for taking up certain number of shares, but a declaration was made to the registrar that every director had paid to the company the sum necessary to be paid on their shares, it was held that the person who made the declartion was guilty of an offence under this section, and it was no defence to urge that in law the two directors had ceased to be directors and therefore the declaration filed by the accused could not refer to them 3. In the last noted case strong observations were made by the Judges on the duties and responsibilities of promoters and officers of limited companies in this country.

Balance-sheet,—when false ?

The Bombay High Court in the case noted below 1 held that the officers of a company should not be prosecuted in respect of a statement made in a balance-sheet where the points involved are really technical matters of correct and incorrect accounting and there is no proof of dishonesty 4. In this case Marten C. J. observed that the Police Courts were not the proper place to fight out disputed questions of finance in big companies or banks ; that could more properly be done in the Civil Courts, more especially as the decision of the Civil Courts is binding. The learned Chief Justice suggested the desirability of amending this section so as to put a check on persons desiring to put the criminal law in motion against officers of companies, especially banking companies, requiring the sanction of the Advocate General before any prosecution is launched under this section.

The Calcutta High Court has however held that under this section it is not necessary that the statement should be such as to deceive any one or that it should even be dishonest. Thus where after a company had begun to earn revenue, current expenditure was debited to organization expenses when it ought to have been debited in revenue accounts in the balance-sheet, the balance-sheet contained a wilful false statement and a technical offence under this section was committed 5. In a more recent case, where in the balance-sheet of a cotton mill which did not do any subsidiary banking business but received deposits from its customers merely to assist its working capital, a certain amount was shown under the heading "Deposits by others," but the amount so shown did not represent the total figure of accumulated deposits but only the incorporated net figure after deducting a loan advanced to another mill which was nowhere separately shown, and it appeared that the managing directors, responsible for the balance-sheet, had an interest in not disclosing the loan granted to the other mill, it was held by Cunliffe & Henderson JJ. that an offence of wilfully making a false statement under this section had been committed 6. In the last cited case Mr. Justice Cunliffe held that the term "wilfully" used in the Act does not contemplate a criminal

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1. [1932] 1 K. B. 442.
2. R. v. Bishirgian (supra) at p. 502.
3. Emp. v. S. M. Bose [1922] 46 All. 218, 22 A. L. J. 83.
4. In re Shmdasani [1929] B. 443, 31 Bom. L R. 1144.
5. Baidya Nath v. Emp. [1935] C. 741, 37 Cr. L. J. 115, 159 I. C. 523, per Lort-Williams & Jack JJ.
6. Superintendent & Remembrancer of Legal Affairs v. Akhil Bandhu Guha [1936] C. 680, 40 C. W. N. 1341.

intention but means merely the spontaneous action of a person who is a free agent, the matters to be determined according to the circumstances of each case. The word "wilfully" occurs in most of the penal sections under the Act and this definition of the word, it is submitted with great respect, is rather difficult to understand. The last saving clause of it however makes it less stringent. His Lordship appears, if one may be permitted to say so, to be on surer ground when he observes: "It is quite obvious that a loan and a deposit are items differing completly in principle from the balance-sheet point of view. Strictly speaking they ought to appear on different sides, for one is an asset and the other is a liability; consolidating the two and presenting them as one item to the readers, to my mind, is a striking case of non-disclosure amounting to a suppression of the truth" 1. Whether there is a false statement in a balance-sheet or a prospectus must be judged by the effect upon the ordinary investor reading the statement in an ordinarily careful manner in which an investor would so read it 2.

Persons in the position of managing directors of a company are entrusted with the money of the public and are bound to deal with it as trustees. They cannot be allowed with impunity to publish false balance-sheets in order to conceal their own improper conduct 2.

Where the balance-sheet shows a cash profit for the year by adding bad or doubtful debts, it amounts to a false statement and a very material one; the fact that no dividend was declared makes no difference 3. A person signing a false balance-sheet as a director, manager or auditor is liable to prosecutlon under this section 3.

To deceive & to defraud—distinction.

An intention to deceive constitutes the offence without proof of any intent to defraud; for "to deceive" is to induce a state of mind and "to defraud" is to induce a course of conduct 4. If a statement is demonstrably false and nobody can reasonably be expected to put it forward as true, then and then only the party responsible for such statement may be held criminally liable; any *ex posto facto* consideration of the view held by the directors with regard to the balance-sheet should not be a determining factor in a case under this section 5.

As to what a balance-sheet should contain see s. 132 and notes and s. 132A.

Penalty for wrongful wihholding of property.

282A. *Any director, managing agent, manager or other officer or employee of a company who wrongfully obtains possession of any property of a company, or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and authorised by this Act, shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine not exceeding one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied or in default to suffer imprisonment for a period not exceeding two years.*

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1. Ibid at p. 1346.
2. Superintendent & Remembrancer of Legal Affairs v. Akhil Bandhu Guha [1936] C. 680, 40 C. W. N. 1341.
3. O. L. Karachi Bank v. Directors & Others [1932] S. 4, 134 I. C. 993.
4. London & Globe Finance Corpn. [1903] 1 Ch. 728; see also Queen-Empress v. Moss [1894] 16 All. 88.
5. Karachi Bank v. Shewaram [1933] S. 12, 140 I. C. 31, 33 Cr. L. J. 899.

Penalty for misapplication of securities by employers.

282B. (1) *All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company in a special account to be opened by the company for the purpose in a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934, and no portion thereof shall be utilised by the company except for the purposes agreed to in the contract of service.*

(2) *Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund after the commencement of the Indian Companies (Amendment) Act, 1936, shall be invested, and shall be invested only in securities mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882, and all moneys belonging to such fund at the commencement of the said Act which are not so invested shall be invested in such securities by annual instalments not exceeding ten in number and not less in amount in any year than one-tenth of the whole amount of such moneys.*

(3) *Notwithstanding anything to the contrary in the rules of any fund to which sub-section (2) applies or in any contract between a company and its employees, no employee shall be entitled to receive in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (2) interest at a rate exceeding the rate of interest yielded by such investment.*

(4) *An employee shall be entitled on request made in this behalf to the company to see the bank's receipt for any money or security such as is referred to in sub-section (1) and sub-section (2).*

(5) *Any director, managing agent, manager or other officer of the company who knowingly contravenes or permits or authorises the contravention of the provisions of this section shall be liable on conviction to a fine not exceeding five hundred rupees.*

Sections 282A and 282B have been introduced by the Companies (Amendment) Act, 1936. For their effect see Introduction.

Employee's security money.

Sub-s. (1). Where a person has deposited money with a bank as security for the good behaviour of an employee, the money so deposited constitutes trust money in the hands of the bank and on the liquidation of the bank the depositor is entitled to prority over other creditors of the bank. Trust moneys are entirely outside the liquidation 1. Where promissory notes are so deposited with a bank, it is impossible for the depositor to trace the subsequent disposal of these notes. That is a matter which is within the special knowledge of the bank

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1. Dinshaw & Co. v. Mt. Krishna Piyari [1941] O. 126, [1940] O. W. N. 1022, [1940] O. L. R. 691 relying on Travancore N. & Q. Bank [1939] M. 337, [1939] 1 M. L. J. 209, 183 I. C. 203.

and the burden of proof with reference to that is on the bank. Hence if the bank does not produce its accounts in Court, if cannot be heard to say that there is no evidence as to what has become of these promissory notes 1. Where realizations of assets of a bank subsequent to its liquidation are really only the previously existing assets present in the bank's strong rooms changed into different forms, the charge in respect of trust moneys deposited with the bank extends also to these subsequent realizations of assets 1. Where the depositor of the aforesaid money serves a notice on a bank demanding return of the money, there is no express revocation of the trust by the demand. On the contrary the demand is to be regarded as a demand for performance of the trust. The trust cannot be extinguished until the purpose of the trust has completely been fulfilled by the return of the trust property to the depositor subject to the lawful claims of the bank against that property 1.

Provident fund—if trust money.

Sub-s. (2). When the Alliance Bank of Simla, Ltd. went into voluntary liquidation, its employees who were members of a provident fund established by the bank for their benefit, claimed payment in full of the amounts of the balances, standing to their respective credits in the books of the bank, in priority to the unsecured creditors : it was held by Sanderson C. J. and Richardson J. that no distinction could be drawn between those members' subscriptions and the bank's contributions and the credits in respect of interests. Both the subscriptions and the contributions being trust money, the employees were entitled to priority not only in respect of the contributions made by them but also in respect of the contributions made by the bank together with interest provided by the bank. The amounts were the properties of the employees in the possession and under the control of the bank 2. Where the amount of a provident fund lying in deposit in a bank to the credit of the company has not been invested in the authorized securiies as provided by this section, the company is guilty of breach of trust, and the bank, with knowledge of this, must be held to have participated in the breach of trust 3. Vice-Chancellor Malins in *Gray v. Lewis* 4 observed : "All persons who obtain possession of trust funds with a knowledge that their title is derived from a breach of trust will be compelled to restore such trust funds," Where the amount of the provident fund lying in deposit in a bank to the credit of the company has not been invested in the authorized securities as provided in this section, the company is guilty of a breach of trust, and the bank with knowledge of this must be held to have participated in the breach of trust 5.

Where it is a breach of trust.

The fact that a bank is given notice that money deposited is trust money does not however make the bank a trustee thereof 5. The legal consequences of such notice is only that the bank should not participate in a breach of trust by the trustee, because a banker who receives into his possession moneys of which his customer has, to his knowledge, become the owner in a fiduciary character, contracts his duty not to part with them, even at the mandate of his customer, for purposes which he knows are inconsistent with the customer's fiduciary character and duty 6. This section imposes on a company the obligation to invest all

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1. Dinshaw & Co. v. Mt. Krishna Piyari [1941] O. 126, [1940] O. W. N. 1022, [1940] O. L. R. 691 relying on Travancore N. & Q. Bank [1939] M. 337, [1939] 1 M. L. J. 209, 183 I. C. 203.
2. Macpherson v. Mc Kechnie [1924] C. 818, 28 C.W.N. 721, 84 I.C. 14.
3. East Tanjore E. S. C. Employees' Provident Fund v. O. L. Travancore N. & Q. Bank [1939] M. W. N. 1068.
4. [1869] 8 Eq. 526 at p. 543.
5. Desikachari v. Pirrie [1940] M. 184, [1939] M. W. N. 1068.
6. East Tanjore &c. Fund v. O. L. Travancore N. & Q. Bank (supra) and Travancore National & Q. Bank [1940] M. 178, 50 M. L. W. 944, [1939] M. W. N. 1066.

provident fund moneys in securities mentioned in s. 20 of the Indian Trusts Act, 1882 and all such moneys belonging to the fund at the commencement of the Companies (Amendment) Act, 1936 which are not so invested shall be invested in such securities, by annual instalments not exceeding ten in number and not less in amount than one-tenth of the whole amount of such moneys. On the coming into force of the present section, if the said moneys are not so invested as aforesaid, the obligation of the company is to invest a tenth of the said moneys in that year and in every succeeding year in the authorized securities, and the balance of the moneys can be invested in any authorized bank or banks according to the rules of the institution. In so far as the company has not invested the said sum in any authorized security, the company is guilty of a breach of trust and a bank holding the money in deposit must be held to participate in that breach of trust and the bank can therefore be compelled to restore such trust fund, i.e., in respect of so much of the provident fund as it is obligatory on the company to invest in authorized securities 1. The Companies (Amendment) Act, 1936 came into force on 15th January, 1937. See Introduction (p. 1).

Where not.

Where a company has deposited its employee's security fund and provident fund in a bank prior to the coming into operation of this section and the deposit is renewed after that section came into force (i.e., after the 15th January, 1937), it cannot be said that the renewal constitutes a breach of trust on the ground that the moneys are not invested in approved securities mentioned in s. 20 of the Indian Trusts Act, 1882 as required by the present section. So far as the amount of the security deposit is concerned, there can be no breach of trust, because the bank is not a trustee in respect of the same, although the company may be a trustee and the money be trust money in its hands. In regard to the provident fund deposit there can be a breach of trust only in respect of so much of it as is required to be invested in authorized securities, namely, the annual instalments for the year or years in question, and there can be no breach of trust in respect of the balance 2.

As to the securities mentioned in s. 20 of the Indian Trusts Act II of 1882, see notes to s. 277K *ante*.

Penalty for improper use of word "Limited."

283. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used.

Saving of pending proceedings for winding up.

[**284.** *The provisions with respect to winding up contained in this Act as amended by the Indian Companies (Amendment) Act, 1936, shall not apply to any company of which the winding up has commenced before the commencement of the Indian Companies (Amendment) Act, 1936, but every such company shall be wound up in the same manner and with the same incidents as if the Indian Companies (Amendment) Act, 1936, had not been passed.*]

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1. East Tanjore E. S. C. Employees' Provident Fund v. O. L. Travancore N. & Q. Bank [1939] M. W. N. 1068.
2. Trichinopoly T. H. P. Fund v. O. L. Travancore National & Q. Bank [1939] M. W. N. 1069.

For the old s. 284 this new section has been substituted by the amending Act II of 1938. The old section ran as follows :

> "284. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed, and, for the purposes of the winding up, the Indian Companies Act, 1882, shall be deemed to remain in full force."

The Incian Companies (Amendment) Act, 1936 came into force on 15th January, 1937—*vide* Introduction (p. 1).

Operation of the new Act.

The plain and rational meaning of the old section was that this Act did not operate upon proceedings arising out of the winding up which commenced after its enforcement, *i.e.*, 1st April, 1914, and that no part of the Act had application to the pending liquidation 1.

Saving of document.

285. Every instrument of transfer or other document made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not been passed, and for the purposes of that instrument or document the repealed enactment shall be deemed to remain in full force.

Former registration offices, registers, and registrars, continued.

286. (1) The offices existing at the commencement of this Act for registration of joint-stock companies shall be continued as if they had been established under this Act.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

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Sub-s. (3) has been omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Savings for Indian Life Assurance Companies Act, 1912, and Provident Insurance Societies Act, 1912.

287. Nothing in this Act shall affect the provisions of the Indian Life Assurance Companies Act, 1912, or of the Provident Insurance Societies Act, 1912.

For the Acts mentioned in this section now see the Insurance Act IV of 1938.

The provisions of the Companies Act apply to the life assurance companies registered under that Act except in those matters dealt with by the Life Assurance Companies Act 2. The effect of this section and s. 22 of the Life Assurance Companies Act, 1912 (now see s. 53 *et seq.* of the Insurance Act IV of 1938), is to incorporate into the latter Act the relevant provisions about winding up contained in the present Act. In the case of a petition presented by the policy-holders of a life assurance company the petition

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1. Lala Daulat Rai v. Wazir Chand [1915] 29 I.C. 272 ; Khiali Ram v. People's Bank [1915] 28 I.C. 600; Hem Raj. v. Beant Singh [1922] 68 I.C. 792.
2. Ajit v. Emp. [1934] C. 63, 37 C.W.N. 1159.

must be by at least ten policy-holders while in the case of any other company a single shareholder or creditor may present such petition [1].

Where a statutory deposit has been made by an assurance company, the policy-holders of the class in respect of which the deposit was made and the general creditors of the company whose claims arise in connection with the business of that class have in a liquidation a claim in priority to other creditors over the investments made by the company representing that deposit [2]. Where at the date of a compulsory winding up of an insurance company, the company was transacting life assurance business, bond investment and endowment certificate business and general accident insurance business, all the creditors of the company ranked *pari passu* against all the assets, except in so far as the receipts of either the life assurance fund or the bond investment fund could be traced into any particular asset [3].

Construction of "registrar of joint-stock companies" in Act XXI of 1860.

288. In sections 1 and 18 of Act No. XXI of 1860 (for the registration of Literary, Scientific and Charitable Societies), the words "registrar of joint-stock companies" shall be construed to mean the registrar under this Act.

Act not to apply to Banks of Bengal, Madras or Bombay.

289. Save as provided in sections 188 and 189, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay.

References to the Bank of Bengal &c. are now to the Imperial Bank of India [4].

Application of Act to non-trading companies with purely Provincial objects.

[**289A.** *The powers conferred by this Act on the Central Government shall, in relation to companies with objects confined to a single Province which are not trading corporations, be powers of the Provincial Government.*]

Note.—By Notification No. 88 (14)—Tr. (C. L.) the Governor General in Council has been pleased to direct that the Chief Commissioners of Chief Commissioners' Provinces other than British Baluchistan shall, until further orders, exercise the powers of a Provincial Government, under section 289A.—*See Gazette of India dated 2nd October, 1937, Part I, p. 1618.*

This new section has been inserted by the Government of India (Adaptation of Indian Laws) Order, 1937 which came into operation on 1st April, 1937.

For the definition of "trading corporation" see s. 2 (1) (17) *ante.*

Repeal of Acts and Savings.

290. (1) The enactments mentioned in the Fourth Schedule are hereby repealed to the extent specified in the fourth column thereof :

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[1] Aryan Life Assurance Society [1938] B. 182.
[2] Hearts of Oak Assurance Co. [1936] 1 Ch. 558.
[3] London General Insurance Co. [1939] 1 Ch. 505.
[4] Imperial Bank of India Act XLVII of 1920, s. 32.

Provided that the repeal shall not affect—

(*a*) the incorporation of any company registered under any enactment hereby repealed ; nor

(*b*) Table B in the Schedule annexed to Act No. XIX of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act ; nor

(c) Table A in the First Schedule annexed to the Indian Companies Act, 1882, or any part thereof, so far as the same applies to any company existing at the commencement of this Act.

(2) All fees directed, resolutions passed and other things duly done under any enactment hereby repealed, shall be deemed to have been directed, passed or done under this Act.

(3) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.

Effect of repeal.

Proceedings for obtaining registration of a company and a grant of certificate commences, within the meaning of s. 6 of the General Clauses Act 1, when the memorandum and the articles of association are received in the registrar's office and a repeal of the Act after that date does not affect those proceedings, and the provisions of the Act repealed apply to the company, and not the later Act 2, relating to the right, privilege, obligation or liability acquired, accrued or incurred under the enactment repealed. See s. 6 of the General Clauses Act 1.

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1. Act X of 1897.
2. West Hopetown Tea Co. [1889] 11 All. 349.

SCHEDULES.

THE FIRST SCHEDULE.

(See sections 2, 17, 18, 79, 266.)

TABLE A.

Regulations for Management of a Company Limited by Shares.

Preliminary.

Table A has statutory authority.

Table A has statutory authority and provisions contained in it or copied from it into special articles are valid although apparently inconsistent with some express provisions of the Act 1. A reference to its contents may be made in order to ascertain the intention of the legislature in such Act 2.

Presumption.

Shareholders are presumed to know the Act as well as the memorandum and the articles of association 3. In the absence of any proof to the contrary, it must be taken that Table A has been incorporated in the articles of association 4.

1. In these regulations, unless the context otherwise requires, expressions defined in the Indian Companies Act, 1913, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Definitions.

For definitions of expressions used in the Act see s. 2 and notes thereto and compare the provisions of the General Clauses Act, 1897.

"Words importing the singular shall include the plural, and *vice-versa*"—this applies to special articles if they are used with Table A 5.

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1. Lock v. Queensland Co. [1896] A. C. 461.
2. Re Pyle Works [1890] 44 Ch. D. 534 C. A.
3. Campbell's case [1873] 9 Ch. App. 1, 22.
4. S. 18, and Prayan Prassad v. Gaya Bank [1931] P. 44, 10 Pat. 249, 130 I. C. 534.
5. Fell v. Darby Leather Co. [1931] 2 Ch. 252, 145 L. T. 350.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Indian Companies Act, 1913, if, and so far as, those restrictions are binding upon the company.

See notes to s. 103.

Directors. As regards the powers, duties and liabilities of directors see notes to s. 2, sub-s. (1), cl. (5), s. 83, s. 83A, s. 83B, s. 85, s. 86, s. 91A, s. 91B, s. 91C, s. 100 and regulations 68 to 75 of this Table.

The restrictions imposed by s. 103 do not apply to private companies.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine *and any preference share may with the sanction of a special resolution be issued on the terms that it is or at the option of the company is liable to be redeemed.*

By the Companies (Amendment) Act, 1936, the words in italics have been added.

Classes of shares. Shares may be preferential as to capital, as to dividend or as to both, or may have peculiar privileges in the matter of voting or in other respects. These are generally called "preference" shares as distinguished from "ordinary" shares or "deferred" shares. There may be shares of more classes than three, each of which has peculiar rights and conditions attached to it such as "preference" and "second preference" shares.

As to what are "founders' shares" see notes to s. 93, sub-s. 1 (a).

Right of alteration. Where the memorandum of association provides for the division of the capital into different classes with different rights, they cannot be altered except as part of a reorganization or arrangement under s. 54 or s. 153. But it is otherwise if the memorandum itself reserves the right to alteration 1. An article like this is valid, when the memorandum is silent on the point 2.

Preference shares. A company having no authority under its memorandum or articles of association to create any preference between different classes of shares, may by special resolution alter the articles so as to authorize the directors to issue preference shares by way of increase of capital 3. If the memorandum or the articles are silent, there is no implied condition that all the shares shall rank

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1. Underwood v. London Music Halls [1901] 2 Ch. 309; Welsbach I. Gas Co. [1904] 1 Ch. 87; James Colmar Ltd. [1897] 1 Ch. 524.
2. South Durham Brewery Co. [1886] 31 Ch. D. 261; Harrison v. Mexican Ry. [1875] 19 Eq. 358; Bangor Slate Co. [1875] 20 Eq. 59.
3. Andrews v. Gas Meter Co. [1897] 1 Ch. 361; see also London & New York Investment Corpn. [1895] 2 Ch. 860.

equally (last note, last page). Where the memorandum of association provides that the preference shareholders are entitled to a cumulative dividend before any dividend is paid or capital repaid to the holders of the ordinary shares, the provision does not prevent the preference shareholders from asserting their statutory right to participate with the ordinary shareholders in any surplus assets 1.

Construction of memo. & articles.

As regards the rights of the preference shareholders ordinarily, except in respect of such matters as must by statute be provided for by the memorandum of association, it is not to be regarded as the dominant document but is to be read in conjunction with the articles 2. But where the provisions of the memorandum with regard to the rights of the preference shareholders are neither ambiguous nor in need of being supplemented, the two documents should not be read together 3.

Upon construction of the memorandum and articles of a company it has been held in England that where they contained an exhaustive delimitation of the rights of the preference shareholders, in the event of a winding up the latter would be entitled to a return of their capital but not to participate in any surplus assets 4.

Rights of holders of preference, ordinary & deferred shares.

Where there are preference shares and ordinary shares, the holders of both classes are, subject to any provision to the contrary, entitled to share *pari passu* in the surplus assets in the winding up, after paying up the whole of the capital 5. But a preference share *prima facie* only gives right to a preferential dividend and not right to a preferential payment of the amount of the share out of the capital in the case of a winding up 6.

Preference shares may either give a preferential right only as to dividend or both as to dividend and to the return of capital 7. The preferential dividend may be cumulative or payable only out of the profits of each year. Preference shares are not *prima facie* entitled to receive any dividend beyond the fixed preferential dividend 8. The preference shares bear the same relation to the ordinary shares as the latter do to the deferred shares. Whatever preference or postponements are intended to be created should be clearly set forth in the memorandum or the articles or in the special resolution authorizing the creation. If they are determined by the memorandum they cannot subsequently be varied 9, except where such variation is contemplated in the memorandum itself 10. But if it is provided in the articles only, the company may take power by special resolution to effect the necessary alteration 11.

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1. William Metcalfe & Sons (infra); Anglo-French Music Co. v. Nicoll [1921] 1 Ch. 386; Espuela Land & Cattle Co. [1909] 2 Ch. 187; Fraser & Chalmers Ltd. [1919] 2 Ch. 114; but see National Telephone Co. [1914] 1 Ch. 755 and Evling v. Israel & Oppenheimer Ltd. [1918] 1 Ch. 101. See notes to s. 192.
2. Angostura Bitters Ltd. v. Kerr [1933] A. C. 550 P. C.; Harrison v. Mexican Ry. Co. [1875] 19 Eq. 358; Anderson's case [1877] 7 Ch. D. 75; Guinness v. Land Corpn. of Ireland [1882] 22 Ch. D. 349; South Durham Brewery Co. [1883] 31 Ch. D. 261.
3. Angostura Bitters Ltd. v. Kerr (supra).
4. Collaroy v. Giffard [1928] 1 Ch. 144. In this case all important previous decisions were discussed.
5. Bridgewater Navigation Co. [1889] 14 App. Cas. 525.
6. London India Rubber Co. [1868] 5 Eq. 519.
7. William Metcalfe & Sons [1933] 1 Ch. 142 C. A.
8. Will v. United Lankat Plantation Co. [1914] A. C. 11.
9. Ashbury v. Watson [1885] 30 Ch. D. 376.
10. See note 1 on page 663.
11. Allen v. Gold Reefs of West Africa [1900] 1 Ch. 656.

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Uncalled share money at the date of the winding up forms part of the assets or capital of the company. The preference shareholders being entitled in winding up to return of capital in priority to other shares, unpaid ordinary share capital can be called up to meet the amount required to pay the preference share capital and which can be repaid to the preference shareholders out of calls made upon the ordinary shareholders to the extent of the unpaid capital on the issued shares. Such payment is of course subject to the discharge of all debts owing by the company and payment of charges ranking prior to the preference shares 1. Where the memorandum of association provides: "No dividend shall be payable except out of the net profits arising from the business of the company", there can be no dividend payable to the preference shareholders from the amount of the share capital when there have been no profits, although under the articles preference shares confer the right to a fixed cumulative preferential dividend 1.

The provision as to the preference does not give a preference in regard to the division of capital unless it is so expressly mentioned 2; and unless the rights of the preference shareholders are clearly expressed in the memorandum, articles or special resolution authorizing the creation, they may, upon a reconstruction of the company, find themselves reduced to the position of ordinary shareholders 3.

Where the articles were altered sanctioning the issue of preference shares and providing that the dividends on them should be paid out of profits only and that in the event of winding up the holders of the preference shares should be entitled to have the surplus assets applied *first* in paying off the capital paid on the preference shares, *secondly* in paying off the arrears of the preferential dividend, it was held that all unpaid preferential dividends were "arrears" of preferential dividends, although no profits had been earned by the company, so that subject to the payment off of the preference shares the surplus assets were applicable in the first place in paying off the whole of the preferential dividend down to the commencement of the winding up 4.

If the preference capital is repayable "with interest" this means with interest from the date of the winding up 5.

If preference shares are issued when there is no power to do so, or in an irregular manner, the subscribers thereof are entitled to have their money returned and they are creditors of the company 6.

Holders of ordinary shares cannot surrender their shares and receive in exchange preference shares of similar amounts 7.

If the right to a preference is conferred in the winding up, but is not further dealt with, the preference capital is to be repaid first, then the ordinary capital, and the surplus divided among both classes in proportion to the nominal amount of share 8.

If it is provided in the memorandum or the articles that the rights of the holders of preference shares should come first, they cannot be postponed 9; but if the

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1. D' Cruz v. Viswanathan [1941] 2 M. L. J. 94.
2. Driffield Gas Light Co. [1898] 1 Ch. 451.
3. Birch v. Cropper [1889] 14 App. Cas. 525.
4. Springbok Estates Ltd. [1920] 1 Ch. 563; New Chinese Antimony Co. [1916] 2 Ch. 115. In this case *re* Hall & Co. [1909] 1 Ch. 521 was not followed.
5. Espuela Land & Cattle Co. [1909] 2 Ch. 187.
6. London & New York Investment Co. [1895] 2 Ch. 860.
7. Adair v. Old Bushmills Distillery [1908] W. N. 24; Bellerby v. Rowland &c. Co. [1902] 2 Ch. 14.
8. Espuela Land & Cattle Co. (supra).
9. James v. Buena Ventura Syndicate [1896] 1 Ch. 456.

preference shares have been issued subject to the rights of the company to issue fresh capital having such preference and priorities as shall be agreed upon, the original preference shares may be postponed 1.

Where a company proposing to issue new preference shares ranking *pari passu* with its existing preference shares served notice on one of its shareholders (sued on behalf of himself and other preference shareholders) and an originating summons was issued for determination of certain questions with reference to the proposed issue, Buckley, J. refused to appoint the defendant to represent the class and said that he would not decide the questions so as to bind the class of preference shareholders unless a meeting of them was first called which nominated a person to represent the class. He however decided the question as between the company and the defendant 2.

Where the articles provided : "Shares shall be under the control of the directors who may allot or otherwise dispose of the same to such persons on such terms and conditions and at such times as the directors think fit and with full power to give to any person the call of any shares either at par or at a premium and for such time and for such consideration as the directors think fit," it was held that the powers conferred on the directors included the power to control the character of the shares 3.

Court's power.

The Court has power in a proper case to confirm a resolution for reduction of capital notwithstanding that the voting powers may be thereby affected 4.

See notes to ss. 6 and 192 and reg. 98 *post.*

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may *subject to the provisions of section 66A of the Indian Companies Act, 1913* be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

In this regulation the words in italics after the word "may" have been inserted by the Companies (Amendment) Act, 1936.

Reg. 52—adjourned meeting.

If a class meeting held under this regulation stands adjourned under reg. 52 for want of quorum, the latter part of reg. 52 will not apply and the full quorum will be required at the adjourned meeting 5.

As to what is an extraordinary resolution see s. 81 and notes thereto.

For the provisions relating to general meetings see regs. 49 to 67 *post.* See notes to ss. 6 and 49 and regs. 3 and 98.

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1. See note 1 on p. 663. 2. Morgan's Brewery Co. v. Crosskill [1902] 1 Ch. 898.
3. Campbell v. Rofe [1933] A. C. 91 P. C.
4. James Colmer Ltd. 1897] 1 Ch. 524.
5. Hemans v. Hotchkiss Ordnance Co.,[1899] 1 Ch. 115.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 101 and 104 of the Indian Companies Act, 1913, as may be applicable thereto.

See ss. 101 and 104 and notes to those sections.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all.

One or more certificates.

The articles of a private company contained the following articles: "Art. 12. Every member shall be entitled to one certificate for all the shares registered in his name or to several certificates each for a part of such shares...". "Art. 14. Every member shall be entitled to one certificate *gratis*, but for every subsequent certificate issued to him the sum of one shilling or such smaller sum as the directors may determine shall be paid to the company." *Held*, that any shareholder of the company was entitled from time to time to require the company to issue to him in place of a share certificate for a number of shares, on payment of the appropriate amount, a number of certificates, each for one or more shares making together the number of shares included in the share certificate surrendered [1].

See ss. 29, 31 and 108 and notes to those sections.

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit.

Indemnity.

Where one of the articles provided: "If any certificate be lost or destroyed, then upon proof to the satisfaction of the directors, or in default of proof, on such indemnity, as the directors deem adequate, being given, a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate," it was held by Buckland J. that the clause gave an absolute discretion to the directors as to the indemnity to be furnished with which the Court would not interfere [2].

See notes to s. 29.

8. *Except to the extent allowed by section 54A of the Indian Companies Act, 1913* no part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

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[1] Sharpe v. Tophams, Ltd. [1939] 1 Ch. 373, C. A.

[2] Dulichand v. Dunbar Mills Co. [1927] C. 947, 31 C. W. N. 155.

The words in italics have been inserted by the Companies (Amendment) Act, 1936.

Shares once duly issued cannot be cancelled at the request of the holder of such shares, for this will amount to a reduction of capital 1. For other cases see notes to s. 55.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company ; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

No lien on directors' fees.

A company has usually a lien on shares and dividends due on them for realization of money due on them ; but it has no lien on fees due to a director. The company cannot, without the consent of the director, adjust the fees due to him towards interest due from him on calls on shares which had not been paid in time 2.

Company can waive the lien.

A lien conferred upon a company by its articles on all shares registered in the name of a member for his debts to the company, such member's title to transfer the same while he remains indebted being thereby made dependent on the approval of the directors, is valid 3. Such a lien may be discharged by a new arrangement between the creditor and the debtor, the terms of which are incompatible with its retention, or which show an intention to waive it 3 ; for the provisions being for the protection of the company, it can waive the lien 3.

Where an indebted shareholder applied to the company for time and the indulgence was granted in consideration of his authorizing certain shares, other than those on which a lien is claimed, to be sold on default without the delay prescribed in the articles, it was held that no limitation of the lien on the shares was contemplated by either party and that a transfer by the indebted shareholder of such shares should not be registered 3.

When the lien is lost.

The company's lien is lost if it registers a transfer of the shares subject to the lien 4. A dividend declared after execution but before registration of a transfer may however be retained under the lien 5. If a transfer is however passed by mistake which is corrected within a reasonable time, it may be validated 6. If a member pledges his shares to some third party as security for a loan and the company has notice of the transaction, the company loses its lien for all debts owing by

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1. Purmanand v. Cormack [1882] 6 Bom. 326.
2. Punjab Electric Power Co. v. Suraj Kishan [1936] 164 I.C. 586.
3. Bank of Africa v. Salisbury Gold Mining Co. [1892] A.C. 281 ; Bradford Banking Co. v. Henry Briggs, Sons & Co. [1886] 12 App. Cas. 29 was approved.
4. Northern Assam Tea Co. [1870] 10 Eq. 458.
5. Penford v. M' Murdo [1892] 8 T. L. R. 507.
6. Anderson's case [1869] 8 Eq. 509 ; *re* Rowe [1904] 2 K. B. 489.

that member to the company subsequent to the knowledge of the company of the transaction[1]. The company will be deemed to have knowledge of such transaction when the managing director[2] or other directors[3] had notice of a charge, although in their private capacity.

Money payable will include a director's fees paid to a person under mistake[4].

Assignment of lien.

A company has a lien on shares for money owing to the company where the lien is given by the articles or by agreement[5]. If the company has lien on A's shares for a debt and raises the money from B to pay the debt, A may call upon the company to assign its lien to B[6].

Priority.

If a member mortgages his shares and the mortgagee gives notice to the company and then the shareholder incurs a liability to the company, the mortgagee has priority over the company's lien[7]. But the articles may provide that any mortgagee who takes with notice of the company's lien may be postponed to that lien. The company may enforce the lien against the registered shareholder, even though he is only a trustee[8].

If the articles give the company "a first and paramount lien and charge" for the debts of the shareholders, the company cannot claim priority in respect of money becoming due from the holder to the company after notice that security has been given upon the shares to another person[9].

Where before an attachment the company had no lien on the shares for its debts, the attachment has the effect of preventing the company from giving itself a lien over the shares with a retrospective operation. In such cases the claim of the attaching creditor prevails against that of the company[10].

A provision in the articles making a shareholder's debt to the company a charge on his shares applies to the case of debtors who afterwards become shareholders[11].

Effect of death.

The lien does not cease on the death of a member, but continues available against his executors, though not themselves members[12]. Where under the articles of association a company had a first and paramount lien upon all shares registered in the name of a member for his debts, liabilities and engagements, the articles created an equitable charge on the shares, and on the death of the shareholder his widow to whom he bequeathed some of the shares took them subject to the obligation to discharge a proportionate amount of the moneys owing to the company by the testator at the time of his death[13].

Articles cannot be altered to extend the lien to fully paid up shares[14].

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[1] Union Indian Sugar Mills Co. [1933] A. 607; Bradford Banking Co. v. Henry Briggs, Sons & Co. [1886] 12 App. Cas 29.

[2] Union Indian Sugar Mills Co. (supra).

[3] Rainford v. James Keith &c. Co. [1905] 2 Ch. 147.

[4] Bodega Co. [1904] 2 Ch. 276.

[5] Kingstown Yacht Club [1888] 21 L. R. Ir. 199; Allen v. Gold Reefs [1900] 1 Ch. 656 C. A.

[6] Everitt v. Automatic Co. [1892] 3 Ch. 506.

[7] Bradford Banking Co. v. Henry Briggs, Sons & Co. [1886] 12 App. Cas. 29.

[8] New L. & B. Bank v. Brocklebank [1882] 21 Ch. D. 302.

[9] Bradford Banking Co. v. Henry Briggs, Sons & Co. (supra); Bank of Africa v. Salisbury Gold Co. [1892] A. C. 281; Rainford v. James Keith & Blackman Co. [1905] 2 Ch. 147, 161.

[10] Coimbatore Bazar Bank v. Union Bank [1927] 105 I. C. 246, 26 M. L. W. 209.

[11] Chandoora v. Venugopal Rice Factory [1918] 22 M. L. T. 520, 43 I. C. 508.

[12] Buckley, 10th ed., notes to art. 9.

[13] Tenant v. Turner [1938] Ch. 593.

[14] Hopkinson v. Mortimer, Harley & Co. [1917] 1 Ch. 646.

As to priorities of the company and third parties advancing money on the security of shares see notes to s. 33.

The provisions as to lien and the power to sell under reg. 10 are new.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call ; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

13. The joint-holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

Call is necessary.

Under s. 21, cl. (2) the liability of the shareholders in respect of the balance due on the shares is a debt accruing due from the time when their liability commenced, that is, from the time when they first took up the shares. This liability is not however enforceable until a valid notice has been given in accordance with the articles of association and the provisions of the Act ; the mere passing of the resolution will not constitute a valid call [1]. The mere demand by a company which has acquired the rights of another company in respect of its uncalled capital cannot take the place of a formal call [1].

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[1] Pabna Dhanabhander Co. v. Foezuddin [1932] C. 716, 59 Cal. 1186, 36 C. W. N. 589.

Authority which will make the call.

As the Act is silent as to the authority which will make calls in a going company, the provision should be made in the articles. Where they empower the board of directors to make calls and fix the liability on the shareholders to pay the amount at the time and place appointed, the call can only be made by a resolution of the board indicating the amount of the call and the time and place at which and the person to whom it is to be paid [1]. Even if a notice is subsequently issued to the shareholders, it cannot cure any defect in this respect [1]. An instalment payable by the terms of issue is not a call [2].

Who can exercise the power.

Unless the power to make calls is expressly reserved to the company in general meeting, it may be exercised by the directors [3]. Directors may make calls with the sanction of a general meeting or of the liquidator in a voluntary winding up [4]. In making calls the requirements and formalities stated in the articles must be strictly observed and complied with [5]. An invalid call may however be confirmed by a duly convened and constituted board meeting [6].

Where call is invalid.

A call made by the directors when the number of directors is below the minimum prescribed in the articles [7], or at a meeting without the necessary quorum [8], is *prima facie* invalid. But if a director is a party to the resolution making the call, he will be estopped from denying his liability [9].

Resolution.

It is not necessary for a resolution making the call to specify the time for payment or the person to whom or the place where the call is to be paid [10]. In the last cited case it has been held that when the agents sign in the notice of call "by order of the board," there is the presumption that the agents act properly. The first proposition however appears to be doubtful. But their Lordships guardedly say that even if such a resolution is necessary it is a matter which the parties can waive. In an earlier case Madgavkar and Allison JJ. held [11] that where in their resolutions the directors omitted to mention the amount, time or place of payment, the calls were invalid and *ultra vires* and the company was not bound by such *ultra vires* acts.

A call is owing from the date of the resolution making it, although if may be payable at a future date [12].

Court's power to interfere.

As a general rule the Court will not interfere with the internal management of a company by inquiring into the necessity or propriety of making a call in a going company [13]. But it may do so in exceptional cases, as for instance, where a call was made on two only of several shareholders [14].

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[1] Pioneer Alkali Works v. Amiruddin [1926] 50 Bom. 461, 28 Bom. L. R. 411; Cawley & Co. [1889] 42 Ch. D. 209.

[2] Alexander v. Automatic Telephone Co. [1900] 2 Ch. 56.

[3] Ambergate Ry. Co. v. Mitchel [1849] 6 Ry. & Can. Cas. 235.

[4] Ladd's case [1893] 3 Ch. 450.

[5] Chubwa Tea Co. v. Barry [1866] 15 L. T. 449.

[6] Austin's case [1871] 24 L. T. 932.

[7] Bottomley's case [1881] 16 Ch. D. 681.

[8] London & S. Counties Land Co. [1886] 31 Ch. D. 223.

[9] York Tramways Co. v. Willows [1882] 8 Q. B. D. 685, 46 L. T. 296; Faure E. Accumulator Co. v. Phillipart [1888] 58 L. T. 525.

[10] Dhanraj v. Wadia [1933] B. 80, 35 Bom. L. R. 26 following Newry & Ennyskillen Ry. Co. v. Edmunds [1848] 2 Ex. 119, 17 L. J. Ex. 102, and Johnson v. Lyttle's Iron Agency [1877] 5 Ch. D. 687. But see Bhagirath Spinning & Weaving Co. v. Balaji [1930] B. 267, 54 Bom. 178, 32 Bom. L. R. 87, 125 I. C. 419.

[11] Bhagirath Spining & Weaving Co. v. Balaji (supra).

[12] Indian C. N. & Trading Co. v. Padamsey [1934] B. 97, 36 Bom. L. R. 32, 150 I. C. 467; Faure E. Accumulator Co. (supra).

[13] Bailey v. Birkenhead Ry. Co. [1850] 12 Beav. 433; Odessa Tramways Co. v. Mendel [1878] 8 Ch. D. 235.

[14] Galloway v. Halle Concert Society [1915] 2 Ch. 233.

Making two calls at one meeting.

Where the amount of a call is limited by the articles, the directors can validly at one meeting make two calls, each for the maximum amount, payable on different dates 1. A call is owing from the day on which it is made although it be "payable" on a subsequent date 2.

Money or money's worth to be paid.

The specialty debt under the English law resulting from a call on shares can only be discharged by accord and satisfaction when the company has received money or money's worth. For this purpose the consideration given by way of payment must be something which is regarded by the patties as fairly representing the sum to be discharged. The consideration must not be a clear blind or clearly colourable or illusory 3.

Liability on shares issued at a discount.

It being *ultra vires* for a company to issue shares at a discount, or by way of bonus, although authorized to do so by the articles, the holders of the shares so issued are not thereby relieved from liability in a winding up to calls for the amount unpaid on their shares for the adjustment of rights of the contributories *inter se* as well as for payment of the company's debts and costs of the winding up 4.

Defence in an action for call.

To an action for calls it is not sufficient answer for the defendant to say that he has repudiated the contract because of misrepresentation in the prospectus. In order to succeed he must show not only that he has repudiated the contract, but that he has after discovering the misrepresentation complained and taken prompt steps to have his name removed from the register 5. A statement that "no further calls are contemplated" affords no defence to an action 6.

Injunction against forfeiture.

Where the liability of the shareholder to pay the call is questioned, the Court may restrain the company from declaring the shares forfeited during the pendency of the suit 7. In such cases the plaintiff is usually required to pay the amount of the call into Court, but this is not necessarily a condition precedent 8.

Future call.

If a share has been forfeited for non-payment of a call, a future call for the same amount may be made upon the purchaser of the forfeited shares 9. Where it is stated that "no further calls are contemplated" this does not amount to an assurance or pledge that no call at any time shall be made 10. A company may prove, in the administration of the estate of a deceased shareholder whose estate is insolvent, for the estimated value of the liability to future calls in respect of the shares standing in his name 11.

A contract allowing payment of share money by instalments is determined by the

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1. Universal Corpn. v. Hughes [1909] S. C. 1434.
2. Dawe's case [1869] 38 L. J. Ch. 512.
3. White Star Line, Ltd. [1938] Ch. 458 C. A.
4. Welton v. Saffery [1897] A. C. 299.
5. First National Re-insurance Co. v. Greenfield [1921] 2 K. B. 260, explaining Bwlch-y-Plwm Lead Mining Co. v. Baynes [1867] L. R. 2 Ex. 324 and Aaron's Reefs v. Twiss [1896] A.C. 273. 6. Universal Corpn. v. Hughes [1909] S.C. 1434.
7. Lamb v. Sambas Rubber Co. [1908] 1 Ch. 845.
8. Jones v. Pacaya Rubber Co. [1911] 1 K. B. 455 at p. 459.
9. New Balkis Eersteling v. Randt Gold Mining Co. [1903] 1 K. B. 461, [1904] A. C. 165.
10. Per Willes J., in Accidental & Marine Insce. Corpn. [1866] 15 L. T. 182, 183.
11. In re McMahon [1900] 1 Ch. 173.

Payment by instalment. winding up, and the liquidator may make immediate call 1. The liquidator in a voluntary winding up may enforce payment of a call previously made by the directors 2.

Transfer of shares before call becomes payable. If a transfer of shares has been made and registered after a call has been made, but before the amount has become payable, the transferor, in the absence of a contract to the contrary, may be liable 3. In this connection the following dictum of Lindley L. J. should be borne in mind : "The word 'share' does not denote rights only—it denotes obligation also and when a member transfers his share, he transfers all his rights and obligations as a shareholder as from the date of the transfer. He does not transfer rights to dividends and bonuses already declared, nor does he transfer liabilities in respect of calls already made but he transfers his rights to payments and his liabilities to future calls" 3.

When shares are transferred after a call has been made, the liability is not transferred to the transferee 3. The company can protect itself by refusing to register the transfer until the call is paid 4. But if the former holder pays calls, even after forfeiture, this will relieve the purchaser 5.

Set off. A debt due and owing by the company to a shareholder, but not one which is only payable at a future date, can be set off against a sum due from him upon calls while the company is a going concern 6. An agreement to set off a present liability of the company against future calls is also good 7. But a set off within three months of a winding up will be regarded as a fraudulent preference 8.

An agreement that the calls shall not be payable in cash but only by set off against goods supplied by the shareholder is *ultra vires* 9.

Call after death. A call made after the death of a member is payable out of his estate 10. In the case of bankruptcy of a member, the company may prove not only for calls actually made, but also for the estimated amount of future calls 11.

Payment in advance of call. The directors may, if authorized by the articles, allow shareholders to pay amounts in advance of calls and may pay interest thereon if it be for the benefit of the company 12. Such a shareholder becomes a creditor of the company ; so, if there is no profit the interest may be paid out of capital 13. But it does not follow that he is entitled to repayment of the amount so advanced 14.

An agreement by a company to treat moneys which the director pays under a guarantee of the company's overdraft as payment in advance of calls on his shares does not enable him to set off moneys so paid, after winding up commenced, against calls made on the shares by the liquidator 15.

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1. Cordova Union Gold Co. [1891] 2 Ch. 580.
2. Stone v. City & County Bank [1878] 3 C. P. D. 282, 299, 309.
3. Taylor, Phillips & Rickard's case [1897] 1 Ch. 306.
4. New Balkis &c. v. Rand G. M. Co., supra.
5. Randt Gold Mining Co. [1904] 2 Ch. 468.
6. Habershon's case [1868] 5 Eq. 286. 7. Jones, Lloyd & Co. [1889] 41 Ch. D. 159.
8. Washington Diamond Mining Co. [1893] 3 Ch. 95 C. A. ; see s. 231 of this Act and s. 54 (1) of the Provincial Insolvency Act.
9. Austin's case [1871] 24 L. T. 932.
10. New Zealand Gold Extraction Co. v. Peacock [1894] 1 Q. B. 622.
11. In re McMahon [1900] 1 Ch. 173 ; see also West Coast Goldfields [1906] 1 Ch. 1.
12. Syke's case [1872] 13 Eq. 255.
13. Lock v. Queensland Investment Co. [1896] A. C. 461.
14. London & Northern S. S. Co. v. Farmer [1914] W. N. 200, 111 L. T. 204.
15. Law Car Insurance Corpn. [1912] 1 Ch. 405.

Limitation.

Under art. 112 of the Limitation Act (IX of 1908) the period of limitation is 3 years from the time when the call is payable. As to the deposit and allotment moneys the limitation is 3 years from the date on which the allottee, even if he is a subscriber to the memorandum, is registered as a shareholder 1. But if the company goes into liquidation, the official liquidator can enforce a call though as against the company it is barred by limitation 2 or by the provision of the Code of Civil Procedure 3.

In *Sorabji* v. *Iswardas* 2 Sergent C. J. observed as follows : "This section [s. 61 of Act VI of 1882 (s. 156 of the Act of 1913)] corresponds to s. 38 of the English Companies Act of 1862, the effect of which was fully considered by Sir George Jessel in *in re Whitehouse & Co.* 9 Ch. D. 596 at p. 600. After pointing out that the section creates a new liability as regards the shareholders the Master of the Rolls held that the contribution under the section included unpaid calls made before the winding up as well as those made after the winding up. 'It is true', he says, 'that a call made before the winding up is a debt due to the company, but that does not affect the new liability to contribute.' Nor can it in this view of the section affect the liability created by the section that the debt was barred." This view was fully endorsed by Piggot and Walsh JJ. in *Jagannath* v. *U. P. Flour Mills* 4 where their Lordships said : "A question of principle has been raised apparently for the first time in this Court namely, as to whether an unpaid call, due from a shareholder to a company, which has become time-barred under art. 112, Limitation Act and has ceased to be recoverable debt by the company, may yet be recovered if at any date subsequent to its having become time-barred the company is wound up." Then after referring to ss. 125 and 151 of the Act of 1882 corresponding to ss. 159 and 187 of the present Act their Lordships went on—"Really it is not even the right of a company which is being enforced by a liquidator. It is a statutory right of the creditors of a company to enforce against the contributories of an insolvent company through the Court the obligation which the shareholders took upon themselves, when they originally subscribed, in the event of insolvency subsequently overtaking the company." But in a recent case where the purchaser of unpaid calls in execution of a mortgage decree against the company, after the company had gone into liquidation, sued the shareholder for the unpaid call, it was held by C. C. Ghose, A. C. J. and Pearson J. that Art. 112 of the Limitation Act applied and the suit was barred by limitation and that the fact that the liquidator was a party to the suit did not improve the plaintiff's position 5. See in this connection notes to s. 21 *ante* and *Viswanath* v. *Holyland Cinetone, Ltd.* 6.

Now the question is whether in respect of this new liability arising under s. 156 of the present Act arts. 112, 115 or 120 of the Limitation Act, will be applicable. The Bombay High Court held in 1886 that art. 120 applied 7. But the Allahabad High

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1. Matichand v. Dalsukhram [1893] 17 Bom. 469.
2. Sorabji v. Iswardas [1896] 20 Bom. 554; Vaideswara v. Siva Subramaniya [1908] 31 Mad. 66; Jagannath v. U. P. Flour Mills [1916] 38 All. 347; Prayan Prasad v. Gaya Bank [1931] P. 44, 10 Pat. 249, 130 I. C. 534; Re Whitehouse & Co. [1878] 9 Ch. D. 595; Ladies' Dress Assn. v. Pulbrook [1900] 2 Q. B. 376.
3. Dehra Dun Mussooree Electric Tramways Co. [1928] A. 272, 50 All. 517, 26A. L. J. 256.
4. Jagannath v. U. P. Flour Mills [1916] 38 All. 347.
5. Pabna Dhanabhandar Co. v. Promode Chandra [1932] C. 382, 51 C. L. J. 588, 137 I. C. 380.
6. [1939] A. 739, [1939] A. L. J. 950.
7. Parrel Spinning & Weaving Co. v. Manek Haji [1886] 10 Bom. 483.

Court has recently held that in such a case art. 115 applies and where the shares had been forfeited time runs from the date of forfeiture 1. The Oudh Chief Court has however pointed out in a later case 2 that when a suit to recover call money has been barred by limitation, the fact that simply because the name is kept in the register as a shareholder, the forfeiture does not revive the debt and the company cannot claim that limitation should run from the date of forfeiture. See notes to ss. 156 and 187.

The power of making calls being in the nature of trust should be exercised for the general benefit of the company 3.

Jurisdiction.

A suit by a company for recovery of arrears of allotment money and call money due on share allotted is cognizable by a Court of Small Causes 4. S. 159 (2) makes an exception with regard to the liability of a contributory, no claim founded on such liability being cognizable by any Court of Small Causes sitting outside the Presidency towns. But Mr. Justice Patterson of the Calcutta High Court seems to have taken the view that a claim against a shareholder of the balance due on his shares is not of the nature of a claim cognizable by a Court of Small Causes in view of s. 159 (2) 5.

For calls in the winding up see s. 187 and notes thereto.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

Interest after forfeiture of shares.

Interest on calls in arrear can be recovered after forfeiture of the share for non-payment of calls 6 especially if there is a special contract in the articles such as this : "Any member whose shares have been forfeited shall notwithstanding be liable to pay all calls, instalments, interest and expenses in respect of such shares at the time of forfeiture together with interest thereon from the time of forfeiture until payment at......per cent. per annum" 7. But where a share has been forfeited before the day for payment for a second call arrives, there is no liability for payment of the second call 6.

Where the articles provide that forfeiture should extinguish all rights relating to the share, but that the shareholder should remain liable to pay calls owing at the time of forfeiture, interest cannot be recovered upon the arrears of call 8 in the absence of a special contract 9.

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1. Bishambhar v. Agra Electric Stores [1932] A. 342 [1932] A. L. J. 354.
2. Shri Mahalakshmi Sugar Corpn. v. Jasjit [1933] O. 285.
3. Alexander v. Automatic Telephone Co. [1900] 2 Ch. 56 ; Gilbert's case [1870] 5 Ch. App. 559.
4. Peoples' Bank v. Chanan Ram [1933] L. 657, 143 I. C. 723.
5. Pabna Dhanabhander Co. v. Foezuddin [1932] C. 716, 59 Cal. 1186, 36 C. W. N. 589.
6. Faure Electric Co. v. Phillipart [1888] 58 L. T. 525.
7. Habib v. Standard Aluminium & Brass Works [1925] B. 321, 49 Bom. 715, 88 I. C. 96, 27 Bom. L. R. 574.
8. Stocken's case [1868] 3 Ch. App. 412.
9. Bishambhar v. Agra Electric Stores [1932] A. 342, [1932] A. L. J. 354.

A forfeiture after notice in which interest is claimed from the date of the call and not from the date fixed for payment is invalid 1.

In the absence of a provision for interest after notice to pay on a fixed day, interest was allowed at 5 p. c. per annum in the case noted below 2.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

This regulation is authorized by s. 49. In the absence of such an arrangement, calls made on one or more members only to the exclusion of the others are *prima facie* invalid 3.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Payment in advance of call.

The directors may receive payment from a shareholder of any amounts remaining unpaid on his shares 4, and may pay out of capital or any other asset interest on sums so paid up in advance of calls 4. As to the construction of an agreement to pay interest at a particular rate free of income tax see *Noel* v. *Trust Agency Co.* 5. There is nothing *ultra vires* in an article providing for payment of such interest out of capital 4. The money so paid will not however be regarded as a loan to the company and cannot be repaid 6.

Power is fiduciary.

The power is a fiduciary one and must be exercised *bona fide* for the benefit of the company 7. If the directors exercise the power for their own interest only, the transaction may be set aside 8. But the directors not being trustees for the creditors, the latter cannot complain if the power has been

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1. Johnson v. Lyttle's Iron Agency [1877] 5 Ch. D. 687 ; Cawley's &c. Co. [1889] 42 Ch. D. 209.
2. Barrow's case [1868] 3 Ch. App. 784.
3. Galloway v. Halle Concert Society [1915] 2 Ch. 233.
4. Lock v. Queensland Investment Co. [1896] 1 Ch. 397, [1896] A. C 461.
5. [1937] Ch. 438.
6. London & Northern Steamship Co. v. Farmer [1914] W. N. 200, 111 L. T. 204.
7. Gilbert's case [1870] 5 Ch. App. 559 ; Alexander v. Automatic Telephone Co. [1900] 2 Ch. 56.
8. Syke's case [1872] 13 Eq. 255.

exercised in such a way as to diminish the fund available for payment of the company's debts 1.

Right in surplus assets.

In the winding up of a company if after payment of debts there are surplus assets for division amongst the shareholders, the amount paid in advance with interest up to the date of repayment will be repayable before the balance is divided 2.

Transfer and transmission of shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

Distinction between transfer and transmission.

"The word 'transferred' applied to transfers *inter vivos* and must be distinguished from transmission, which is a proper term for what happens on death" 3. "Transmission, is used to express the legal result which follows from death, but not to express the actual step which is necessary to invest the new holder. That is done by transfer", *i.e.* a change in the register of members 4.

Share includes rights as well as obligations.

"The word share does not denote rights only—it denotes obligations also ; and when a member transfers his share, he transfers all his rights and obligations as a shareholder as from the date of the transfer. He does not transfer rights to dividends and bonuses already declared, nor does he transfer liabilities in respect of calls already made, but he transfers his rights to future payments and his liabilities to future calls" 5.

Blank transfers.

In the case of a transfer of shares in blank, the transferee is entitled to fill in the necessary particulars including his own name as transferee and the date of the transfer, after the death of the original transferor, and the transfer so made will be a valid one 6. But a person who without inquiry takes from another an instrument signed in blank by a third party and fills up the blank, cannot, even in the case of a negotiable instrument, claim the benefit of being a purchaser for value without notice, so as to acquire a greater right than the person from whom he himself received the instrument 7. If the holder of a blank transfer, acting beyond his authority, fills up the transfer with the name of a transferee, and the transfer is registered, the transferor will be estopped and if the purchase be for value without notice, he will get the shares, but not if he in fact knew that the agent had only a limited authority 8.

The holder of a blank transfer may fill in his own name and get the transfer

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1. Poole, Jackson & Whyte's case [1878] 9 Ch. D. 322.
2. Exchange Drapery Co. [1888] 38 Ch. D. 171.
3. [1937] Ch. 438.
4. Per Lord Dunedin in Brassard v. Smith [1925] A. C. 371 at pp. 375, 376.
5. Per Lindley L. J. in Taylor, Phillips & Rickard's case [1897] 1 Ch. 298 at pp. 306, 307.
6. Bengal Silk Mills Co. [1941] 45 C. W. N. 1109.
7. France v. Clark [1884] 26 Ch. D. 257.
8. Lord Sheffield v. London Joint Stock Bank [1888] 13 App. Cas. 333 ; London J. S. Bank v. Simmons [1892] A. C. 201.

registered holding the legal title to the shares as security 1, and in that case he may sell the shares on failure of the mortgagor to pay after a reasonable time 1. He can also transfer the security and fill in the name of the purchaser ; but he is not entitled to mortgage the shares 2.

The transfer of a blank certificate may, in the case of a mortgage, give a good title, if there is an intent to transfer, but the duty of the transferee from an earlier mortgagee of such document cannot give a good title, unless he has a good title himself 3.

By depositing with the mortgagee a transfer in blank executed by the mortgagor together with the share certificate, a good equitable security may be given and notice to the company is not necessary for perfecting the mortgagee's title 4. But where the company itself is an incumbrancer, notice should be given to the company 5.

In the case of a mortgagee of shares by deposit of the share certificate together with a blank transfer, the fact that the mortgagee in giving notice requiring payment makes a mistake as to the amount due on the mortgage and demands too much is not a ground for invalidating the exercise of his implied power 6. If a debtor delivers to his creditor a blank transfer by way of security that does not however enable the creditor to delegate to another person authority to fill it up for purposes foreign to the original contract 7.

Transfer need not be by deed.

It is not necessary that a transfer should be by deed sealed and delivered 8. In certain cases shares may validly be transferred even without any instrument of transfer, *e. g.*, where shares are sold to enforce a lien. But shares transferred by delivery of scrip is illegal 9. An insufficiently stamped transfer will be validated by payment of the duty and penalty 10.

In the case of a transfer the question is whether the transferor has agreed to transfer and the transferee to accept the shares 11. Where the articles do not require a deed, a transfer in blank filled up later will convey to the transferee not only the equitable, but also the legal title 12, *i. e.*, the legal right to call upon the company to register the transfer. But until registration no legal title, strictly speaking, accrues 13, at any rate until all necessary conditions have been fulfilled to give the transferee as between himself and the company a present, absolute, unconditional right to have the transfer registered 14.

Where a shareholder has an absolute right to transfer his shares, the transfer is complete as soon as the parties sign the deed of transfer 15.

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1. Deverges v. Sandeman, Clarke & Co. [1901] 1 Ch. 70, [1902] 1 Ch. 579 ; *Ex. p.* Whinney [1905] W. N. 143, 54 W. R. 203 ; Stubbs v. Slater [1910] 1 Ch. 632.
2. London Joint Stock Bank v. Simmons (supra).
3. Per Vaughan Williams J. in Fry v. Smellie [1912] 3 K. B. 282, 292.
4. Société Général v. Walker [1886] 11 App. Cas. 20 ; France v. Clark [1883] 22 Ch. D. 830, [1884] 26 Ch. D. 257 ; Colonial Bank v. Whinney [1886] 11 App. Cas. 426.
5. Bradford Banking Co. v. Henry Briggs, Sons & Co. [1886] 12 App. Cas. 29.
6. Stubbs v. Slater [1910] 1 Ch. 632.
7. France v. Clark (supra).
8. *Ex. p.* Sargent [1873] 17 Eq. 273.
9. Princess of Reuss v. Bos [1871] 5 H. L. 176 ; Mc Euen v. West London Wharves Co. [1871] 6 Ch. App. 655.
10. Indo-China Steam Navigation Co. [1917] 2 Ch. 100.
11. Langer's case [1868] 37 L. J. Ch. 292, 18 L. T. 67.
12. *Ex. p.* Sargent (supra) ; Davies' case [1875] 33 L. T. 834 ; Langer's case (supra).
13. Société Générale v. Walker (supra) ; Nanney v. Morgan [1887] 35 Ch. D. 598.
14. Moore v. North Western Bank [1891] 2 Ch. 599 ; Peat v. Clayton [1906] 1 Ch. 659 ; Rimmer v. Webster [1902] 2 Ch. 163 ; Ireland v. Hart [1902] 1 Ch 522.
15. Swan Mal v. Shiv Charan [1923] 71 I. C. 814.

Transfer executed by transferor alone.

Where the articles, as here, provide that the instrument of transfer is to be executed both by the transferor and the transferee, a transfer executed by the transferor alone does not possibly pass the title [1]. But a transferee who has not signed the instrument of transfer may be liable if he has been registered as a shareholder and has acted as such [2].

Irregularities.

Minor irregularities may not affect the transfer, or may be condoned or the parties may be estopped [3]. Wrong distinguishing numbers will not affect the transfer [4], nor if the numbers are not inserted by mistake [5]. Non-observance of the requisite formalities is however a fatal defect [6].

Provision for pre-emption.

Where the articles provided that whenever any member ceased to be employed by the company, then that member should transfer any ordinary shares held by him to a person named by the directors on notice and that the "fair value of any ordinary share within the meaning of the clause shall be a sum equal to the proportion of the value of the assets of the company, exclusive of goodwill, appearing on the books of the company to which the said shares shall be entitled on winding up," and it was further provided that "the certificate of the directors as to such amount shall be binding and conclusive," it was held that in arriving at the value of the shares belonging to the appellant which he was transferring under the articles, the directors were entitled to write off from the value of the whole assets, exclusive of goodwill as they appeared in the last balance sheet, a sum by way of depreciation [7].

Where under the articles the directors had power at a general meeting by a three-fourths majority to determine that the shares of any member should be sold to other members and to fix the price, it was held that the company could not acquire the shares of a member at any price it liked or without ascertaining their value [8], but they could determine the price at a fair valuation, provided that the resolution passed for that purpose had not been prompted by ill-will or any predatory intention [8].

Where a company undertakes to sell the shares of a shareholder, the position of its managing director in negotiating and completing the sale is clearly one of a fiduciary character and utmost good faith should be observed in the transaction. If any advantage was obtained by the managing director as the fruit of the sale, the benefit must go to the owners of the shares [9].

A provision in the articles for a compulsory transfer of shares is not repugnant to the nature of personal property, nor obnoxious to the rule against perpetuity [10].

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[1] Ortegosa v. Brown, Janson & Co. [1878] 38 L. T. 145 ; Murray v. Bush [1873] 6 H. L. 50 ; Mc Euen v. West London Wharves (supra) ; Musgrave and Hart's case [1867] 5 Eq. 193 ; Marino's case [1867] 2 Ch. App. 596 ; London Founders' Assn. v. Clarke [1888] 20 Q. B. D. 576 ; *Ex. p.* Hennessy [1850] 2 Mac. & Gord. 201 ; Nagabhusan v. Ramchandra [1922] 45 Mad. 537.

[2] Cunninghame v. Glasgow Bank [1879] 4 App. Cas. 607 ; Taurine Co. [1884] 25 Ch. D. 118.

[3] Taurine Co. [1884] 25 Ch. D. 118.

[4] Ind's case [1872] 7 Ch. App. 485.

[5] Letheby and Christopher Ltd. [1904] 1 Ch. 815 ; Bishop's case [1872] 7 Ch. App. 296 n.

[6] Hakim Rai v. Peshwar Bank [1915] 162 P. W. R., 31 I. C. 865.

[7] Jacobsen v. Jamaica Times [1921] 90 L.J.P.C. 100.

[8] Phillips v. Manufacturers' Securities Ltd. [1915] 31 T.L.R. 451, [1917] 116 L.T. 290, 86 L.J. Ch. 305.

[9] Co-operative Co. v. Bhagwan Das [1930] A. 615, [1930] A.L.J. 1396, 128 I.C. 229.

[10] Borland's Trustee v. Steel Bros. & Co. [1901] 1 Ch. 279 ; Phillips v. Manufactures' Securities Co. [1917] 86 L.J. Ch. 305, 116 L.T. 290.

Construction. Articles restricting transfer of shares should be so construed as not unreasonably to prevent shareholders from fairly and reasonably exercising their powers as members 1.

Purchaser at Court sale. The position of a purchaser at a Court sale is neither better nor worse than that of a private purchaser 2.

A purchaser of shares subject to a lien is bound by it, but he may require the company to resort first to any shares remaining in the hands of the vendor 3.

If a transfer is made to a firm in its firm name, the company may reject the transfer 4.

Letter of renunciation. A letter of renunciation in favour of a nominee and acceptance by the latter of an allotment of bonus shares is not a transfer of shares within the meaning of this regulation 5.

For transfer of shares in a private company see notes to S. 2. (13).

See the new s. 34. For other cases see notes to ss. 28 and 38.

As to stamp see Art. 62 (a), Stamp Act and "Stamp Duty" in the Appendix.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve :

I, A B of , in consideration of the sum of rupees paid to me by C D of (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share (*or* shares) numbered in the undertaking called the Company, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share (*or* shares) subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, etc.

Immaterial omission. Under articles which provide that "every transfer must be in writing and in the usual common form," the directors cannot refuse to register a transfer because it omits particulars which would be found in a common form, but are in the circumstances immaterial 6.

20. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may

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1. Hobson, Houghton & Co. [1929] 1 Ch. 300.
2. Manilal v. Gordhan &c. Co. [1917] 41 Bom. 76 ; Nagabhusan v. Ramchandra [1922] 45 Mad. 537.
3. Gray v. Stone [1893] W.N. 133, 69 L. T. 282.
4. Vagliano A. Collieries [1910] 103 L.T. 211.
5. Poole Shipping Co. [1920] 1 Ch. 251.
6. Letheby v. Christopher [1904] 1 Ch. 815.

also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(*a*) a fee not exceeding two rupees is paid to the company in respect thereof ; and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee and the transferor notice of the refusal.

Amendment.

The words in italics in this regulation have been inserted by the Indian Companies (Amendment) Act, 1936. The amendment is in keeping with sub-s. (4) of the new s. 34, which may be compared.

Board's right to decline.

The board's right of declining registration requires to be exercised by a vote of the board *ad hoc* 1. Where registration of a transferee is under the articles subject to the approval of the transferee by the directors, the fact that the transferee is already a shareholder is of no avail ; and in the absence of evidence that the directors have acted *mala fide*, their refusal to register the transfer cannot be questioned 2. Where the directors in their discretion refuse to register certain transfers because they consider the transferee is unsuitable to be a member of the company in its interest, there is no obligation upon them to give their actual reasons, nor can they be exposed to the suspicion of *mala fides* 3. The fact that the majority of shareholders are willing to recognize the transfer is absolutely immaterial 3.

Directors' acts without authority.

If the directors do acts in a matter in which they have no authority, then these acts are null and void 4. But if they neglect the acts which are within their authority and which they ought to perform, neither the Court of law nor of equity will allow them afterwards to take advantage of their own neglect 4.

Directors' duty.

The directors cannot refuse registration of a transfer without considering the personality of the transferee 5. They are however entitled to time to consider the papers, however regular they may appear to be 6. The directors must act strictly as trustees in carrying through the transfers unfettered by any undertaking or promise to any intending purchaser 7.

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1. Hackney Pavilion Ltd. [1924] 1 Ch. 276.
2. Dublin N. C. Milling Co. [1909] 1 I. R. 179.
3. Jagadish v. Paras Ram [1941] A. 360, [1941] A. L. J. 483.
4. Bargate v. Shortridge [1855] 5 H. L. C. 297.
5. Bede Steamship Co. [1917] 1 Ch. 123.
6. Ottos Kopje Mines [1893] 1 Ch. 618, 625.
7. Clarke v. Workman [1920] 1 I. R. 107.

Fully paid up shares. The articles of a company provided that the company was to have a first and paramount lien upon all shares other than the fully paid up shares and that the board could refuse to register any transfer of shares while the shareholder executing the transfer was indebted to the company. Such a shareholder who was indebted to the company transferred the shares and it was contended that the board could refuse to register the transfer : *held*, that it could not have been intended to give the company any right to refuse to register the transfer of such shares 1.

Waiver. Compliance with formalities and rules prescribed by the articles is a matter which the company may or may not insist upon 2.

Construction of articles. Where the articles provided that the company could decline to register a transferee without assigning any reason and that so long as a transferee's name was not registered the transferor would continue the owner of the shares, it was held that the articles were meant to safeguard the interests of the company and could not affect the right of a shareholder to transfer his shares or determine the rights and liabilities of the shareholder and his transferee *inter se* 3.

Where the articles provided *inter alia* that the holder of a share must give notice in writing to the company for a proposed transfer with the consequence that the shares were offered to the other members and the price was to be ascertained in a manner specified in the articles, it was held by the Court of Appeal in England (Lord Hanworth dissenting) that the share must be regarded as containing as a necessary incident the obligation to offer it through the agency of the company to the shareholders at the articles price 4.

Onus. Where by the articles a company reserves to itself the right of refusing to recognise a transfer if it appears to be against the interest of the company and an action is brought against the company in respect of non-registration of a transfer, the burden is on the plaintiff to prove that the refusal to recognise the transfer was not *bona fide* and valid 5. No doubt the discretion vested in the directors does not entitle them to act "arbitrarily" or "wantonly"; but if a shareholder challenges the undoubted right of directors to refuse registration of a transfer in their discretion, on the ground that they acted *mala fide* and arbitrarily, the burden lies heavily on that shareholder 6.

Shares resemble choses in action. A share in such a company as a manufacturing company carrying on its business in the United States resembles a chose in action in this respect only, that it is assignable and the assignee would be entitled to sue upon it to obtain his appropriate share in the net profits just as the original holders would be 7. Shares are "goods" within the meaning of s. 76 of the Indian Contract Act 8.

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1. Narayandas v. P. & O. Banking Corpn. [1934] M. 476, 57 Mad. 955, 150 I.C. 591.
2. Union Indian Sugar Mills v. Jai Deo [1922] 44 All. 151, 154.
3. Swan Mal v. Shivchurn [1923] 71 I. C. 814.
4. In re Sir W. T. Paulin [1935] 1 K. B. 26.
5. Sri Tripura Sundari Cotton Press Co. v. Addepalli [1935] M. 784, 69 M.L.J. 239, 158 I.C. 601 ; see also Coalport China Co. [1895] 2 Ch. 404 ; *Ex. p.* Penney [1873] 8 Ch. App. 416 ; Sree Mahant Kishora v. Coimbatore Spinning & Weaving Co. [1903] 26 Md. 79 ; Rajagopala v. Ramanuja [1923] 72 I.C. 459.
6. Jagadish v. Paras Ram, supra.
7. Singer v. Williams [1921] A. C. 41 at p. 53.
8. Maneckji v. Wadilal Sarabhai & Co. [1926] 53 I.A. 92, 30 C. W. N. 890, 43 C. L. J. 508.

Transferor's liability. Under this form of articles the transferor cannot escape liability if he has, actively or passively, induced the directors to pass a transfer or if by collusion with the directors he has procured them in breach of their duty to pass a transfer which they ought not to have passed or has procured postponement of commencement of the winding up in order to get time to execute and tender such a transfer for registration 1.

Entry without authority. Where the secretary enters the name of the transferee in the register without authority, the directors can subsequently decline to pass the transfer 2.

Transfer before call. Where by the articles the directors have power to refuse registration of a transfer until calls due on the shares are paid, the rule will not apply to a transfer which has been lodged for registration before the call is declared 3.

A director may be competent to approve of a transfer of shares to himself 4.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

Hardship. Mitakshara joint Hindu family. The adoption of this clause in its entirety in the articles of association of an Indian company causes hardship to the heirs of small investors who cannot go to the expenses of obtaining letters of administration for the small holding. Under this form of articles the directors often require letters of administration in the case of a deceased shareholder who was a member of a Mitakshara joint Hindu family. But in such a case the shares generally belong to the joint family and a person claiming by survivorship is not entitled to letters of administration to any portion of such property 5, and it is not within the legal competence of any company to lay down any condition regulating the grant of letters of administration in contravention of law 5. In a recent case where a Hindu claimed to represent the deceased by right of survivorship and the articles of the company were in the above form, Braund, J. of the Rangoon High Court has held that the company could rightly ask the claimant to produce a probate or succession certificate 6. In this case the learned Judge observed : clauses 21 and 22 of Table A while appropriate to a system such as that prevailing in England under which a legal title from a deceased person can only be traced either through probate or letters of administration are hardly so appropriate to a system under which a legal title by devolution may be obtained, apart altogether from and without either probate or letters of administration. Inspite of the above remarks and other representations the responsible authorities did not think it necessary to amend the above clauses. This is really regrettable.

A deceased member remains a member for the purposes of the articles, so long as

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1. Lindlar's case [1910] 1 Ch. 312.
2. Chida Mines v. Anderson [1906] 22 T. L. R. 27.
3. Gilbert's case [1870] 5 Ch. App. 559.
4. Bush's case [1873] 6 Ch. App. 246, 262, L, R. 6 H. L. 37, 68.
5. In re Balmukund Dubey [1930] A. 82, 126 I. C. 357.
6. Kasiviswanathan v. Indo-Burma Petroleum Co. [1936] R. 52, 162 I. C. 127.

Liability of deceased member. his name remains on the register without notice to the company of his death 1, and until his interests are transferred his representatives are liable to pay calls 2 and are entitled to receive dividends 3.

Notice. A notice sent to the registered address of the deceased shareholder will, in case the company is not aware of his death 4, have the same effect as if he were alive 1. If the company go into liquidation the legal representative and heir of the deceased shareholder will be made contributories and will be compelled to contribute to the assets of the company 5.

Position of executors. The executor will not be personally liable if he simply sends the probate to be noted without getting himself registered 6. Under articles equivalent to this and the following article the executor has the right to be registered as a member subject to the directors' absolute discretionary right to decline such registration 7. But the board's right is required to be exercised by a vote of the board *ad hoc*, and the mere failure to pass the proposed resolution is not a formal active exercise of the right to decline 7.

Production of probate. The production of a probate gives notice to the company of the names and addresses of the executor, but not any other provision of the will 8.

The executors are entitled to vote at a general meeting as original members 9.

22. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made ; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent person before the death or insolvency.

When the executor of a deceased member has the legal right to the shares of which the deceased member was the registered holder, the executor is entitled, in the absence of any power of veto conferred on the company by its articles of association, to have his name entered on the register of members if he so desires, as a right ancillary to his legal tille to the shares 10. The executors are entitled to have their names entered on

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1. Per Lord Justice Davey in New Zealand & Co. v. Peacock [1894] 1 Q. B. 622; Baird's case [1870] 5 Ch. App. 725, 735; James v. Buena Ventura Syndicate [1896] 1 Ch. 456, 464.
2. James v. Buena Ventura Syndicate (supra).
3. Cf. Bombay Burmah Co. v. Smith [1894] 21 I. A. 139.
4. Allen v. Gold Reefs of W. Africa [1900] 1 Ch. 656, 670.
5. S. 160.
6. Buchan's case [1879] 4 App. Cass. 549, 588-89 & 594.
7. Hackney Pavilion Ltd. [1924] 1 Ch. 276.
8. Grundy v. Briggs [1910] 1 Ch. 444.
9. Marks v. Financial News Ltd. [1919] W. N. 237, 35 T. L. R. 681.
10. Scott v. Frank F. Scott, (London) Ltd. [1940] Ch. 794 C. A. See also Buchan's case [1879] 4 App. Cas. 549; Heward v. Wheatlay [1853] 3 De G. M. & G. 628 (646).

Rights of executors. the register of members without any statement that they hold the shares in a representative capacity and to have their names inserted in such order as they choose 1.

Insolvent's trustee. If the insolvent has executed a transfer by way of security only, the trustee is not entitled to be registered as owner of the shares 2.

Provision for pre-emption. There is nothing obnoxious to the bankruptcy law in articles which *bona fide* provide that a shareholder shall, in the event of his bankruptcy, sell his shares to particular persons at a particular price to be fixed for all persons alike or which is not shown to be less than the fair price which might otherwise be obtained 3.

See notes to s. 35.

23. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Representative must produce probate. Upon the death of a member his representative must produce probate granted by a British Court, although it will involve him in the liability for death duties 4.

His right to vote. Articles may be so framed as to entitle the representative to vote without being registered as a member, and if so, the rejection of votes tendered by such representative will invalidate the resolution passed 5.

Forfeiture of shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

Provision for notice. Where the power of a company to forfeit shares has arisen, the articles of association usually contain provisions as to the sending of notices and the like that may be regarded as being inserted for the protection of the shareholder affected. Such provisions may properly be regarded as being directory only and capable of being waived by the individual shareholder. But no waiver by him can confer upon the company or its directors a power of forfeiture that they do not possess, as for example, a power to forfeit shares for non-payment of calls that are not yet due 6.

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1. T. H. Saunders & Co. [1908] 1 Ch. 415.
2. Ex. *p.* Harrison [1885] 28 Ch. D. 363.
3. Borland's Trustee v. Steel Bros. & Co. [1901] 1 Ch. 279.
4. New York Breweries v. A. G. [1899] A. C. 62.
5. Marks v. Financial News [1919] W. N. 237, 35 T. L. R. 681.
6. Premila Devi v. Peoples Bank of N. India [1938] P.C. 284, 43 C.W.N. 205 (213).

A notice by the directors requesting payment of call within a specified time from the date of service of the notice failing which the shares will be forfeited, has not, by its own force, the effect of forfeiting the shares of those who fail to pay the call. Something more is necessary, *viz.*, a subsequent resolution of the directors that the shares of the defaulting members be forfeited 1. A declared intention to forfeit, not carried into effect or not duly confirmed, is no forfeiture at all. But if there is power to forfeit and a declared intention to forfeit and the shares treated by the company as well as the shareholder as forfeited, the company will be precluded from afterwards insisting that no forfeiture ever took place; and the shareholder in such a case will not be liable as a contributory 1.

The ordinary rule is that there is no binding forfeiture unless it be so declared by the directors, and a mere notice of forfeiture does not excuse the shareholder from payment of calls 1.

Effect of invalid call.

Where the directors did not appoint in their resolution or subsequently any person or place to whom or at which the money due on calls was to be paid, the calls were invalid and *ultra vires* 2. In the last cited case the notice of forfeiture having comprised the amount of calls which was invalid, forfeiture on the basis of the notice was held to be invalid, although the petitioner was bound to pay the money due on allotment (also comprised in the notice).

25. The notice shall name a further day (not earlier than the expiration of fourteen days, from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

Shareholders cannot be relieved of liability.

In the absence of a special power of cancellation or forfeiture, the directors have no power to release shareholders or to cancel shares 3. The provisions in the articles as to notice &c., must be strictly followed 3. A resolution authorizing the money of those shareholders who had not paid their allotment money and are not willing to remain as members to be returned, is *ultra vires* and cannot operate to relieve them of their liability as contributories 3. If there is a real dispute as to whether or not a person has agreed to become a shareholder, the directors can however compromise the dispute and allow him to give up the shares 4. But a compromise by the directors of unpaid calls under guise of forfeiture is *ultra vires* and invalid and the company is not bound by such *ultra vires* acts, though they may be beneficial, unless expressly ratified by all the shareholders or unless with notice or knowledge they have acquiesced in what has been done 5.

Power to forfeit.

If power is not taken in the articles to forfeit shares, neither the directors nor the company in general meeting can make a valid declaration of forfeiture 6.

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1. Prayan Prasad v. Gaya Bank [1931] P. 44, 10 Pat. 249, 130 I. C. 534.
2. Bengal Electric Lamp Works, Ltd. [1941] 45 C. W. N. 1075.
3. People's Industrial Bank v. Jalpa Prasad [1921] 19 A. L. J. 351, 62 I. C. 450.
4. Bath's case [1878] 8 Ch. D. 334.
5. Bhagirath Spinning & Weaving Co. v. Balaji [1930] B. 267, 54 Bom. 178, 32 Bom. L. R. 87, 125 I. C. 419.
6. Barton's case [1859] 4 De G. & J. 46; Clarke v. Hart [1858] 6 H. L. C 633; *Ex. p.* Fletcher [1868] 37 L. J. Ch. 49, 17 L. T. 736.

Articles will be strictly construed.

Articles authorizing forfeiture will be strictly construed [1]. Forfeiture must be preceded by all the proper notices containing all the matters prescribed by the articles and giving all the time required, and a little inaccuracy in complying with the provisions may be fatal [2]. But if the forfeiture is regular, the omission to inform the member [3], or to strike his name off the register, will not invalidate it [4]. A valid call and default are conditions precedent to and necessary for a valid forfeiture [5].

Invalid forfeiture may be restrained.

An article authorizing forfeiture of shares of a member who will bring a suit against the company is invalid [6]. A forfeiture which is invalid or oppressive may be restrained by injunction [7]. The aggrieved shareholder may also sue the company for damages [8].

If a forfeiture is *ultra vires* no lapse of time will make it valid [9].

Power must be exercised bona fide.

The power must be exercised *bona fide* for the good of the company, and not to relieve a shareholder from his liability [10]. A forfeiture collusively arranged between the directors and a shareholder is invalid [11].

Forfeiture may be valid in spite of irregularity.

Where there is an irregularity in the quorum of directors by whom a call was made or in the length of notice of the call, a forfeiture for non-payment of the call may nevertheless be valid [12]. Where a company without any resolution forfeits the shares of a person who does not challenge the forfeiture, and the company enforces the forfeiture for some time, the irregularity should be deemed to have been waived, and the company cannot set aside the forfeiture without the consent of such person [13].

Quorum of directors.

Where the articles do not prescribe the number of directors required to constitute a quorum, the number who usually act in conducting the business of the company will constitute a quorum [14]. For other cases see notes to reg. 88.

When directors may forfeit.

A charge on uncalled capital does not affect the directors' power to forfeit shares [15]. A forfeiture validly made before the commencement of a voluntary winding up cannot be cancelled by the liquidator under s. 227, sub-s. (1) [16].

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[1] Clarke v. Hart (supra).

[2] Johnson v. Lyttle's Iron Agency [1877] 5 Ch. D. 687 ; Garden Gully Co. v. Mc Lister [1875] 1 App. Cas. 39, 55 : Rule v. Jewell [1881] 18 Ch. D. 660 ; but see Jones v. North Vancouver Land Co. [1910] A. C. 317 P. C.

[3] Knight's case [1867] 2 Ch. App. 321.

[4] Lyster's case [1867] 4 Eq. 233.

[5] See note 5, last page.

[6] Hope v. International Financial Society [1876] 4 Ch. D. 327.

[7] Johnson v. Lyttle's Iron Agency (supra) ; Goulton v. London Architectural Co. [1877] W. N. 141 ; Watson v. Eales [1856] 23 Beav. 294.

[8] New Chile Gold Mining Co. [1890] 45 Ch. D. 598.

[9] Spackman v. Evans. [1868] 3 H. L. 171 ; Bellerby v. Rowland &c. Co. [1902] 2 Ch. 14.

[10] Richmond's case [1858] 4 K. & J. 305, 325 ; Gower's case [1868] 6 Eq. 77.

[11] Hall's case [1870] 5 Ch. App. 707 ; Bellerby v. Rowland &c. Co. (supra).

[12] Austin's case [1871] 24 L. T. 932.

[13] Dhanraj v. Wadia [1933] B. 80, 35 Bom. L. R. 26 ; Bhagirath Spinning & Weaving Co. v. Balaji [1930] B. 267, 54 Bom. 178, 32 Bom. L. R. 87, 125 I. C. 419.

[14] Lyster's case [1867] 4 Eq, 233.

[15] Agency Land Co. of Australia [1903] 20 T. L. R. 41.

[16] Daw's case [1868] 6 Eq. 232.

The power of forfeiture may be exercised by the directors after a voluntary winding up, if they obtain sanction of the liquidator or of a general meeting 1.

Provision in articles must be followed.

Where the articles provide that before the company can work forfeiture it has to issue notice in writing to the person whose shares it proposes to forfeit, the company cannot make a member liable for forfeiture otherwise than in accordance with the provisions of the articles 2.

What constitutes a valid forfeiture.

To constitute a valid forfeiture there must be power to forfeit, intention to forfeit and a notice of that intention, and further the intention must be carried out. A default in payment of calls does not *ipso facto* bring about a forfeiture 3. Even where the articles provide that a forfeiture shall take place *ipso facto* on default of payment of a call, the defaulting shareholder cannot insist on the clause being acted upon, it being ineffective 3.

A right of forfeiture in order to be effectively exercised must be pursued with the greatest exactness by the proper parties, that is, by the directors properly appointed and by the requisite number of them, and in the proper manner and for proper cause and *bona fide* for the purpose for which it was conferred 4.

Temporary injunction.

Where in an action to rescind a contract to take shares, the company has given notice to forfeit the shares for non-payment of calls, the Court will, on the plaintiff giving the usual undertaking in damages and paying into the Court the amount of the call with interest, restrain the company from forfeiting the shares until the trial of the action 5.

Surrender or forfeiture.

Where the articles authorize forfeiture or surrender of shares, the directors may validly make forfeiture 6 or accept surrender in case where the circumstances are such that they would have power to forfeit 7. But a collusive forfeiture is an abuse of the power and a fraud 8.

Where surrender is good.

The principle applicable to cases of surrender is that a surrender is good if it amounts to a forfeiture. It is not open to a shareholder to surrender at will his shares and to the company to accept such surrender, unless the act can be brought within the rules relating to forfeiture of shares 9. To hold that a company can, by a resolution of its directors, accept surrender of shares would be to allow the company to reduce its capital at its pleasure 9.

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1. Ladd's case [1893] 3 Ch. 450.
2. People's Industrial Bank v. Jalpa Prasad [1921] 19 A. L. J. 351, 62 I. C. 450; but see Knight's case [1867] 2 Ch. App, 321. See in this connection Viswanath v. Holyland Cinetone, Ltd. [1939] A. 739, [1939] A. L. J. 950.
3. Gokul Chand v. Lahore Bank [1916] 28 I. C. 431 ; Bigg's case [1865] 1 Eq. 309.
4. Kanshi Ram v. Kishore Chand [1916] 29 I.C. 567.
5. Lamb v. Sambas Rubber &c. Co. [1908] 1 Ch. 845 ; Jones v. Pacaya Rubber Ltd. [1911] 1 K.B. 455.
6. Levi's case [1862] 1 De G. J. & Sm. 504 ; Kipling v. Todd [1878] 3 C.P.D. 350.
7. Bellerby v. Rowland & Marwood's S. & Co. [1902] 2 Ch. 14.
8. Esparto Trading Co. [1879] 12 Ch. D. 191 ; Spackman v. Evans [1868] 3 H. L. 171 ; Lord Wallscourt's case [1899] W.N. 258, 7 Mans. 235.
9. Mangal v. Indian Merchants' Bank [1928] L. 240, 29 P.L.R. 119, 107 I.C. 594; see also Mirza Ahmad [1924] M. 703, [1924] M.W.N. 582, 83 I.C. 94 ; Narain Das Lahoredas [1934] S. 39, 149 I.C. 869 ; Balmokund v. Indian Merchants Bank [1928] 110 I.C. 431 ; Vazirmal v. Makran Coast Steam Navgn. Co. [1938] S. 187.

Dictum of Cozens-Hardy L.J.

"Every surrender of shares, whether fully paid or not, involves a reduction of capital which is unlawful, except when sanctioned by the Court under the Companies Act. Forfeiture is statutory exception and is the only exception. For I regard a surrender under circumstances which would justify a forfeiture as merely equivalent to forfeiture" 1.

Dictum of Collins M. R.

"There is no reference in the Act to surrender of shares; but these have been admitted by the Courts upon the principle, as I understand it, that they have practically the same effect as forfeiture, the main difference being that the one is proceeding in *invitum* and the other a proceeding taken with the assent of the shareholder who is unable to retain and pay future calls on the shares" 2.

Powers are usually taken in the articles to annul forfeiture; but it cannot be exercised without the consent of the shareholder 3.

Forfeiture is recognized by the Act 4.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

Technicalities to be strictly observed.

"In the matter of the forfeiture of shares," observed their Lordships of the Judicial Committee in a recent case 5, "technicalities must be strictly observed. And it is not, as is sometimes apt to be forgotten, merely the person whose shares are being forfeited, who is entitled to insist upon the strict fulfilment of the conditions prescribed for forfeiture. For the forfeiture of shares may result in a permanent reduction of the capital of a company... The creditors are therefore entitled to see that the power of forfeiting shares is exercised strictly" 5.

Forfeiture by directors' resolution.

If the articles provide, as here, for forfeiture by resolution of the directors, the Court will assume that the resolution was duly passed if the forfeiture is found properly entered in the book, although there is no minute of the resolution 6. It has been held in a case in the Madras High Court 7 that the shareholders possess the general power of cancelling the resolution of the directors forfeiting shares; but see notes to s. 76. A provision in the articles of association authorizing forfeiture is enforceable and cannot be regarded as a penalty. Wnere there is a provision for forfeiture on the happening of certain events, it operates as an extinction of all interests incidental to the shares, if the events happen 8.

Forfeiture upon contingency.

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1. Per Cozens-Hardy L.J. in Bellerby v. Rowland &c. Co. (supra) at p. 32.
2. Per Collins M. R. *in re* Dronfield Silkstone Coal Co [1881] 17 Ch. D. 76.
3. Larkworthy's case [1903] 1 Ch. 711.
4. See s. 32, sub-s. 2 (g).
5. Premila Devi v. Peoples Bank of N. India [1938] P. C. 284, 43 C. W. N. 205 (213-14).
6. Knight's case [1867] 2 Ch. App. 321; cf. Fireproof Doors [1916] 2 Ch. 142; but see Prayan Prasad v. Gya Bank [1931] P. 44, 10 Pat 249, 130 I. C. 534, and Pokhar Mal v. Flour & Oil Mills Co. [1934] L. 1015, 36 P. L. R. 282.
7. Lakshmana v. Emp. [1932] M. 497, 35 M. L. W. 661.
8. Surajmal v. Ballabhdas [1936] 63 Cal. 531.

Presumption of entry. An entry of forfeiture in the books raises merely a presumption that it has been properly made after a resolution to that effect, but the presumption is inapplicable where there is positive evidence to the contrary 1.

If upon a valid forfeiture, everything necessary has been done on the part of the shareholder, he will not be prejudiced by the default of the company in not taking his name off the register before the winding up 2. A forfeiture of shares by two out of six directors may be valid. Where shares have been forfeited by a valid resolution of the directors, it is immaterial that the name of the owner has not been removed from the register of members 3.

See notes to regs. 24 and 25.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

Re-issue of forfeited shares. A company has usually power to re-issue forfeited shares. It may accept as consideration a sum less than that paid up before the forfeiture 4. Any payment made by the former owner, even after forfeiture, goes in reduction of the amount payable by the new owner 5.

Right to vote. A purchaser of forfeited shares cannot, as a rule, vote until all arrears of calls are paid 6.

Company cannot get the amount twice over. A company cannot get the amount of the share twice over. Where a company in pursuance of its articles has forfeited shares for non-payment of calls, and the articles provide that notwithstanding forfeiture the ex-shareholder shall be liable to pay the amount of the calls, and the shares are subsequently re-alloted to another person, the person is entitled on the winding up of the company to be credited with all sums paid by the previous holder, whether in respect of moneys paid by him as a shareholder in respect of the shares, or as debtor in respect of his liability under the articles to pay calls notwithstanding forfeiture 7. A company is not bound to treat the forfeited shares as if nothing has been paid upon them, this being in effect an issue of shares at a discount 8.

Right to make call. Where shares are forfeited and sold to another "discharged from all calls due prior to the date" of the share certificate, the company may nevertheless make calls on the purchaser for the balance due including the amount previously called but not paid 7.

Where value of shares falls. The language of the articles of a bank clearly implied an interval between forfeiture and disposal of a share. The value of the share fell to nothing by the time the bank decided to take action. In a suit for value of such share, it was held that there was no obligation on the part of the directors to sell or ascertain the value of a forfeited share the moment it was forfeited and

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1. In *re* Mirza Ahmad [1924] M. 703, 83 I. C. 94.
2. Marshall &c. Iron Co. [1868] 7 Eq. 129; Lyster's case [1867] 4 Eq. 233.
3. Lyster's case (supra).
4. Morrison v. Trustees & Executors Corporation [1898] 79 L. T. 605.
5. New Balkis Eersteling v. Randt Gold Mining Co. [1904] A. C. 165.
6. Randt Gold Co. v. Wainwright [1901] 1 Ch. 184; see also Exchange Trust Ltd. [1903] 1 Ch. 711.
7. See last note.
8. Morrison v. Trustee's Corpn. [1898] 79 L. T. 605; Ramwell's case [1881] 29 W. R. 882.

that the decision that the value of the share should be the value at the time of bringing the suit was by no means incorrect and was certainly not in any way perverse or unreasonable 1.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company received payment in full of the nominal amount of the shares.

New liability after forfeiture.

This regulation imposes, on forfeiture, a new obligation or a new debt and as the shareholder thenceforth ceases to be a member, his liability to pay future calls is gone, and all that is left is this new liability to pay the company "all moneys which at the date of forfeiture were presently payable by him to the company in respect of the shares." Such a person is liable with regard to unpaid calls, not as a contributory, either as a present or past member, but as a debtor to the company. This gives the company a fresh cause of action and the period of limitation for a suit to enforce this new obligation begins to run from the time the shares are forfeited and the proper article applicable is art. 115 of the Limitation Act 2. The time from the liquidator filing the list of contributories including the shareholder's name to the date on which the Court held that he was wrongly entered in the list of contributories cannot be excluded under s. 14 of the Limitation Act 2.

Effect of forfeiture.

After forfeiture the shareholder ceases to be a member of the company, he ceases to be liable to pay any further moneys in his capacity as shareholder, and any further liability on his part must be based on some separate contract making him liable to pay these moneys after he had ceased to be a shareholder 3.

Effect of fraud.

If a person is induced by a fraudulent prospectus to apply for an allotment of shares and his shares are afterwards forfeited for non-payment of calls, he ceases to be a shareholder and becomes a mere debtor to the company, and if he has done nothing to affirm the contract, he may repudiate it and defend an action for calls on the ground of fraud 4.

Defaulter's bankruptcy.

Where the company sustains loss on sale and re-allotment of the forfeited shares and the defaulter becomes bankrupt, the company's proof in the bankruptcy must be limited to the actual loss, and payments of uncalled capital by the new allotees must enure for the defaulter's benefit and release him to that extent from his liability under the contract 5.

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1. Prem Kishan v. Peoples Bank of N. India [1935] L. 190, 158 I. C. 10.
2. Maneklal v. Suryapur Mills Co. [1928] B. 252. 52 Bom. 447, 30 Bom, L. R. 549; see also Ladies' Dress Assn. v. Pulbrook [1900] 2 Q. B. 376; Habib v. Standard A. & B. Works [1925] 49 Bom. 715, 27 Bom. L. R. 574; Stocken's case (infra).
3. Indian C. N. & Trading Co. v. Padumsey [1934] B. 97, 36 Bom. L. R. 32, 150 I. C. 467; see also Stocken's case, (infra) & cases under note 2.
4. Aaron's Reefs v. Twiss [1896] A. C. 273, 293, 295.
5. Re Bolton [1930] 143 L. T. 425; North British A. Silk Ltd. [1936] 2 Ch. 48; see also Randt Gold Mining Co. [1904] 2 Ch. 468.

After forfeiture not contributory.

It seems that the shareholder may be sued in the ordinary way for the arrears of call after forfeiture 1, but he cannot be put upon the list of contributories 2, as he has already ceased to be a shareholder 3. It is not open to the official liquidator to take advantage of any irregularity in the procedure of the directors in forfeiting shares so long as the directors were acting *intra vires* and *bona fide*, as he stands in the shoes of the directors 4.

29. A duly verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money (if any), nor shall his title to the share be affected by any irregularity or invalidity in the proceeding in reference to the forfeiture, sale or disposal of the share.

Object.

The object of this regulation is to give the purchaser a good title so that it may not be attacked on the ground of any irregularity in the forfeiture 5.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Clog on equity of redemption.

Forfeiture for debts generally, as distinct from those due from a member as a contributory, would amount to an illegal reduction of capital 6. A lien being an equitable charge in the nature of a mortgage, the power to forfeit the shares of a member on his failure to redeem on a week's notice is a clog on the equity of redemption and as such invalid and *ultra vires* 6.

Conversion of shares into stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction re-convert any stock into paid-up shares of any denomination.

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1. Ladies' Dress Assn. v. Pulbrook (supra).
2. Needham's case [1867] 4 Eq. 135.
3. Stocken's case [1868] 3 Ch. App. 412, 415 ; see also Needham's case (supra).
4. Nanak v. Hindustan National Bank [1928] 109 I. C. 662.
5. New Balkis v. Randt Gold Mining Co. [1904] A. C. 165.
6. Hopkison v. Mortimer, Harley & Co. [1917] 1 Ch. 646.

Stock is simply a set of shares put together in a bundle 1. It is expressed in money instead of as so many shares. A company cannot make an original issue of stock 2. Stock not fully paid up is wholly unlawful and confers no rights on the holders 3. They may be entitled to claim as creditors for the amount they have paid 3.

What is stock.

See ss. 29 and 51 and notes thereto.

32. The holders of stock may transfer the same, or any part thereof in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share-warrants), as are applicable to paid up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Share-warrants.

35. The company may issue share-warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid-up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share, and the amount of the stamp-duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends, or other moneys on the shares included in the warrant.

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1. Morrice v. Aylmer [1875] 7 H. L. 717.
2. Home & Foreign Investment Co. [1912] 1 Ch. 72.
3. Alison's case [1873] 15 Eq. 395, 9 Ch. App. 1.

36. A share-warrant shall entitle the bearer to the shares included in it and the share shall be transferred by the delivery of the share-warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share-warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share-warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

39. Subject as herein otherwise expressly provided, no person shall, as bearer of a share-warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company ; but the bearer of a share-warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share-warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

Alteration of Capital.

41. The directors may, with the sanction of *the company in general meeting*, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

By the Companies (Amendment) Act, 1936, for the words "an extraordinary resolution of the company" after the words "sanction of", the words in italics have been substituted.

The intention to make the specific increase of capital must be embodied in the notice and the resolution [1].

See s. 50, sub-s. 1 (a) and notes thereto.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

Declaratory suit.

A suit by a shareholder for a declaration that the allotment of new shares to certain persons is not legal and the allottees have no power as shareholders on the ground that the resolution authorizing the increase of capital by issuing new shares was invalid and ineffective does not lie, if no consequential relief such as a prayer for rectification of the register of members by removing the names of the new shareholders or for an injuction is sought [2].

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

Agreement between company & vendor.

An agreement between a company and the vendor providing that on any future increase of capital the company will allot to the vendor a certain proportion of the new shares and will pay to him a sum equal to the nominal amount of the shares so allotted, such sum to be immediately applied in paying up in full the shares so allotted, is good so far as the obligation to the allotment goes, but is bad so far as it purports to relieve the allotee from liability to pay up the nominal amount of the shares allotted [3].

See notes to s. 50, sub-s. 1 (a).

44. The company may, by *ordinary resolution*,—

(*a*) consolidate and divide its share capital into shares of larger amount than its existing shares ;

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[1] Mac Connel v. Prill & Co. [1916] 2 Ch. 57.

[2] Jogesh v. Durga Mohan [1932] C. 714, 36 C.W.N. 638, 140 I.C. 76.

[3] Hongkong & China Gas Co. v. Glen [1914] 1 Ch. 527.

(*b*) by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (*d*) of sub-section (1) of section 50 of the Indian Companies Act, 1913 ;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

* * * * *

By the Companies (Amendment) Act, 1936, in the first line for the words "special resolution" the words in italics have been substituted, and Cl. (d) has been omitted. Cl. (d) was as follows :

(*d*) reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

These powers should be taken in the articles of association, otherwise they cannot be exercised. See ss. 50 and 55.

Cl. (a). See s. 50, sub-s. 1 (b) and notes.
Cl. (b). See s. 50, sub-s. 1 (d) and notes.
Cl. (c). See s. 50, sub-s. 1 (e) and notes.

44A. *The company may, by special resolution, reduce its share capital in any manner and with, and subject to any incident authorised and consent required, by law.*

This new regulation has been inserted by the Companies (Amendment) Act, 1936. See s. 55 and notes.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section 77 of the Indian Companies Act, 1913.

For cases relating to the statutory general meeting see notes to s. 77.

46. A general meeting shall be held *within eighteen months from the date of its incorporation and thereafter once at least in every year* at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting, being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

By the Companies (Amendment) Act, 1936, for the words "once in every year" the words in italics have been substituted.

See s. 76 and notes thereto for cases relating to general meetings.

One member is not meeting. One shareholder only present in person does not constitute a general meeting even if he holds a number of proxies [1]. But a company present by a representative appointed under s. 80 will be treated as a member personally present [2].

Exception. Where a company has shares of several classes and all the shares of one class are held by one person, a resolution signed by that person will be a resolution of a meeting of holders of shares of the class for the purpose of an article requiring the sanction of such a resolution to the issue of further shares of the class [3].

Waiver. A company may, it seems, by holding the annual general meetings at other dates waive a provision such as that contained in the last sentence of this regulation [4].

Where the articles of an insurance company provided that the meeting of the policy-holders was to be held at the registered office of the company, and the directors refused permission to hold the meeting there, a meeting held at another place was held to be perfectly regular as the change of venue was caused by the company itself; for a party cannot take advantage of its own wrong [5].

For fuller notes see those under ss. 76 and 79.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, call an extraordinary general meeting, and extraordinary general meetings shall also be called on such requisition, or in default, may be called by such requisitionists, as provided by section 78 of the Indian Companies Act, 1913. If at any time there are not within British India sufficient directors capable of acting to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be called by the directors.

Meaning of first sentence. "'The directors may, whenever they think fit'—that means, I apprehend, that the directors may do it at a meeting properly convened; I do not think it means that any director may, without consulting the others, call an extraordinary general meeting" [6].

Postponement. When a general meeting has been convened, the directors cannot postpone it in the absence of express provision in the articles to that effect [7].

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[1] Sharp v. Dawes [1876] 2 Q. B. D. 26; Sanitary Carbon Co. [1877] W. N. 233.

[2] Kelantan Estates [1920] W. N. 274, 64 S. J. 700.

[3] East v. Benett Bros. [1911] 1 Ch. 163.

[4] Borland's Trustee v. Steel Bros. [1902] 1 Ch. 293.

[5] Subramania v. United India Life Insurance Co. [1928] M. 1215, 55 M. L. J. 385 [New Zealand Shipping Co. v. Société des Ateliers (1919) A.C.I & Quesnel Forks Gold Mining Co. v. Ward (1920) A C. 222 followed].

[6] Per Lindley L. J. in Browne v. La Trinidad [1888] 37 Ch. D. 1 at p. 17.

[7] Smith v. Paringa Mines [1906] 2 Ch. 193.

Effect of irregularity. A meeting convened by a board not properly constituted may be irregular and the resolutions invalid 1. A meeting summoned by the secretary without authority of the directors, duly assembled at a board 2, or without any authority from any director is also invalid 3.

Principle of "internal management." Upon the principle that the Court will not interfere with the internal management of a company, the Court will not direct a meeting for general purposes when the directors or the requisite number of shareholders do not think it advisable to summon a general meeting 4.

Injunction. As regards restraining a general meeting, it must be a very strong case indeed which will justify the Court to do so 5.

As to the holding of an extraordinary general meeting on requisition see s. 78 and notes.

Proceedings at General Meeting.

49. *Subject to the provisions of sub-section (2) of section 81 of the Indian Companies Act, 1913, relating to special resolutions,* fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under *the Indian Companies Act, 1913, or* the regulations of the company, entitled to receive such notice from the company ; but *the accidental omission to give notice to or the non-receipt of notice* by any member shall not invalidate the proceedings at any general meeting.

By the Companies (Amendment) Act, 1936, the words in italics after "but the" have been inserted for the words "non-receipt of notice," and those in italics elsewhere have been inserted.

For cases relating to proceedings at general meetings see notes to s. 76.

Where the regulation does not apply. It has been held in England that this regulation does not apply to meetings of the subscribers to the memorandum of association 6, for which a reasonable notice only is necessary 6. The number of the directors and the names of the first directors shall be determined in writing by a majority of such subscribers 7.

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1. Harben v. Phillips [1883] 23 Ch. D. 14, 34.
2. Haycraft Gold Co. [1900] 2 Ch. 230.
3. State of Wyoming Syndicate [1901] 2 Ch. 431. As to subsequent ratification by the directors see *ibid* at p. 437 and Hooper v. Kerr, Stuart & Co. [1900] 83 L.T. 729.
4. Macdougall v. Gardiner [1875] 10 Ch. App. 606.
5. Isle of Wight Ry. Co. v. Tahourdim [1883] 25 Ch. D. 320 ; Harben v. Phillips [1883] 23 Ch. D. 14.
6. John Morley Building Co. v. Barras [1891] 2 Ch. 386.
7. Reg. 68 *post.*

Sufficiency of notice.

The notice must give substantial information as to what is proposed to be done at the meeting. Resolutions passed upon insufficient notice may be invalid 1. As to what is sufficient notice see the cases noted below 2. If proper and sufficient notice of the intention to propose a resolution is given, nothing more is required and the resolution is not invalidated if owing to an amendment at the first meeting, the resolution passed is not identical with that of the notice 3.

Although the regulation is sufficiently complied with if the notice states the general nature of the business, it is nevertheless desirable, where the business is of great importance, such as a proposed substitution of new articles for Table A, to supplement the notice with an explanatory circular 4.

"It is settled that the notice, which specifies the business to be done or the objects of the meeting, is to be a fair notice intelligible to the minds of ordinary men—the class of men who are shareholders in the company and to whom it is addressed. The Court does not scrutinize these notices with a view to exercise criticism or to find out defects, but it looks at them fairly" 5. The Court is however entitled to look at the notice as part of the *res gestæ* to see if the proceedings are irregular 6.

Shareholders are presumed to know the Act of the legislature and also the terms of the memorandum and articles of association. Notice must be read in reference to these 7.

When the notice did not disclose the contents of the agreement which formed the subject of the resolution, it was held that such a resolution, although adopted by the requisite majority, was invalid and incapable of being made valid by acquiescence on the part of the shareholders 8. But it is competent for the shareholders acting together to waive the formalities required by s. 81 as to notice of intention to propose a resolution as an extraordinary resolution 9. If every member is present at the meeting, any resolution passed unanimously which is not *ultra vires* the company is valid and binding on the company, irrespective of what notice, if any, of the meeting was given 10.

Where notice was given of a resolution that three retiring directors should be re-elected with such amendments as should be determined at the meeting, and an amendment to the resolution was carried appointing two additional directors, it was held that the notice sufficiently indicated the business transacted 11.

Notice issued without authority is invalid.

The resolutions of a general meeting convened by *de facto* directors are not invalidated by any irregularity in the constitution of the board 12. But a notice issued by the secretary without the authority of a resolution of the board is invalid 13. It may however become a good notice if adopted and ratified by a board meeting held prior to the general meeting ; for the

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1. Pacific Coast Coal Mines v. Arbuthnot [1917] A. C. 607 ; Normady v. Ind, Coope & Co. [1908] 1 Ch. 84 ; Baillie v. Oriental Telephone Co. [1915] 1 Ch. 503.
2. Boschoek Proprietary Co. v. Fuke [1906] 1 Ch. 148 ; Betts & Co. v. Macnaghten [1910] 1 Ch. 430 ; Wills v. Murray [1869] 4 Ex. 893 ; Young v. South African Syndicate [1896] 2 Ch. 268.
3. Per Swinfen Eady J. in Torbock v. Westbury [1902] 2 Ch. 871 at p. 874.
4. Young v. South African Syndicate (supra).
5. Per Chitty J. in Henderson v. Bank of Australasia [1890] 45 Ch. D. 330, 337.
6. Betts & Co. v. Macnaghten (supra).
7. Campbell's case [1873] 9 Ch. App. 1, 22.
8. Pacific Coast Coal Mines v. Arbuthnot [1917] A. C. 607.
9. Oxted Motor Co. [1921] 3 K. B. 32.
10. Express Engineering Works [1920] 1 Ch. 466.
11. Betts & Co. v. Macnaghten (supra).
12. Boschoek Ptoprietary Co. v. Fuke (supra).
13. Haycraft Gold Reduction Co. [1900] 16 T.L.R. 350, [1900] 2 Ch. 230.

ratification of an act purporting to be done by an agent on behalf of the principal dates back to the performance of the Act [1].

Members entitled to receive notice.

Subject to the limitation in the articles all shareholders on the register are entitled to receive notice, and if any person entitled to attend is not regularly summoned, such meeting is irregular and its proceedings invalid [2]. But a member who was present at a meeting cannot question its regularity [3].

No notice need be issued on members residing abroad [4]. A notice must give a sufficiently full and frank disclosure of facts upon which the shareholders are asked to vote [5].

In the absence of any provision in the articles the executors or administrators of a member, when not themselves registered as members, are not entitled to notice [6]. It is not necessary to send a notice addressed to a deceased member or to his legal personal representative [6].

Where not.

Members who have no registered address and in respect of whom there has not been furnished to the company any address in this country for the service of notice are not entitled to receive notices of general meetings, and the fact that a member has not been served with notice of a particular meeting does not invalidate a resolution passed at the meeting [7].

See notes to s. 76.

As to what the notice of an extraordinary general meeting should contain see notes to ss. 78 and 79.

In the corresponding regulation of Table A of the English Act only seven days' notice is provided for. Unless it is specifically provided in the articles that the day of service is to be excluded, in the number of days, such day is not to be excluded [8]. The days will probably be calculated from midnight to midnight [9].

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

Special business —notice.

An ordinary general meeting may transact special business if the notice provides for it [10]; but unless the purport of the special business to be transacted is stated in the notice convening the meeting, the meeting is invalid [11]. It is not sufficient in a notice of an extraordinary general meeting to state merely that special business will be transacted [12]. If special business is to be transacted the notice must specify its nature [13].

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1. Per Cozens-Hardy L.J. in Hooper v. Kerr, Stuart & Co. [1900] 83 L. T. 729 at p. 730.
2. Dobson v. Fussey [1831] 7 Bing. 311.
3. British Sugar Refining Co. [1857] 3 K. & J. 408.
4. Union Hill Silver Co. [1870] 22 L.T. 403.
5. Baillie v. Oriental Telephone Co. [1915] 1 Ch. 503.
6. Allen v. Gold Reefs of West Africa [1900] 1 Ch. 656 C. A.
7. Dickson v. Halesowen Steel Co. [1928] W. N. 33.
8. Pavilion Newcastle-upon-Tyne [1911] W. N. 235.
9. Mercantile Investment Co. v. International Co. [1893] 1 Ch. 484 n. at 489 n.
10. Graham v. Van Diemen's Land Co. [1857] 26 L. J. Ex. 73.
11. Kaye v. Cryodon Tramways Co. [1898] 1 Ch. 358 C. A.
12. Wills v. Murray [1869] 4 Ex. 869.
13. Tiessen v. Henderson [1899] 1 Ch. 861.

Under this form of regulation the business of the statutory meeting is special business[1].

Remuneration for past services of directors cannot be voted at an ordinary general meeting unless special notice is given of the intention to propose such a resolution[2].

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, *two members in the case of a private company and five members in the case of any other company* personally present shall be a quorum.

By the Companies (Amendment) Act, 1936, for the words "three members" the words in italics have been substituted.

A person appointed under s. 80 to represent another company will be deemed to be a "member personally present"[3]. Sometimes one member may form a quorum[4].

Quorum.

Resolutions for voluntary winding up of companies are invalid unless passed and confirmed at meetings at each of which there is present the necessary quorum[5]. But two meetings are no longer necessary; see the new sub-s. (2) of s. 81.

The presence of non-members at a meeting without their taking any part in the proceedings does not invalidate the meeting[6].

Non-members.

A resolution passed at a meeting at which there is no quorum[7], or at a meeting not properly convened is invalid[8]. But the minutes will raise a presumption of its validity[9].

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

This regulation with regulation 1 does not enable a single member present in person to constitute an adjourned meeting[10].

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

General meeting.

Where a general meeting is held in accordance with the Court's order, amendments may be rejected by the chairman, if they are contrary to the terms of the order[11].

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[1] Gardner v. Iredale [1912] 1 Ch. 700.
[2] Hutton v. West Cork Ry. Co. [1883] 23 Ch. D. 654.
[3] Kelantan Coco-Nuts Estates [1920] W. N. 274, 94 S. J. 700.
[4] Fireproof Doors Ltd. [1916] 2 Ch. 142.
[5] Cambrian Peat Co. [1875] 31 L. T. 773.
[6] Quin v. National Society [1921] 2 Ch. 318, 323.
[7] Howbeach Coal Co. v. Teagne [1860] 5 H. & N. 151.
[8] Harben v. Phillips [1883] 23 Ch. D. 14, 34.
[9] S. 83 (3).
[10] Daimler Co. v. Continental Tyre Co. [1916] 2 A. C. 307, 324.
[11] Rebello v. Co-operative Navigation & Trading Co. [1924] 26 Bom. L. R. 907.

Chairman's authority.

The chairman at a general meeting has *prima facie* authority to decide all incidental questions which arise at such meeting and necessarily requires decision at the time, and the entry by him in the minute book of the result of a poll or of his decision of all such questions, although not conclusive, is *prima facie* evidence of the result or of the correctness of that decision and the onus is thrown on those who impeach the entry [1].

See notes to s. 76.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Right of adjournment.

At common law there is a right of adjournment of a public meeting and the chairman can exercise it [2]. But this must be done for proper conduct of business and not for its frustration. A chairman has no power to stop a meeting at his will and pleasure. If he attempts to do so, the meeting can appoint another chairman and resolve to go on with the unfinished business [3].

In the absence of a special provision a chairman is not bound to adjourn a meeting. He cannot adjourn it of his mere motion [4]. But where the articles empower the chairman to adjourn a meeting with the consent of the meeting, the chairman has a discretion to adjourn and he can exercise that discretion only with the consent of the meeting, while if the meeting desire an adjournment the chairman is not bound to adjourn [5].

The mere absence of a provision for adjournment in the articles does not give rise to an inference that a power to adjourn is prohibited, for the law gives the right to every meeting to adjourn itself provided the adjournment is for a *bona fide* purpose [6]. Although discussions regarding the articles are out of order in a shareholder's meeting, yet such discussions do not vitiate the *bona fides* of the meeting because there is no difference between *bona fides* in fact and *bona fides* in law or constructive *bona fides*[1].

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[1] Indian Zoedone Co. [1884] 26 Ch. D. 70.

[2] R. v. D' Oyly [1840] 12 Ad. & E. 139, 158; Queen v. Wimbledon Local Board [1882] 8 Q. B. D. 459; but see Salisbury Gold Co. v. Hathorn [1897] A. C. 268, 275.

[3] National Dwellings Society v. Sykes [1894] 3 Ch. 159; Catesby v. Burnett [1916] 2 Ch. 325.

[4] Salisbury Gold Co. v. Hathorn (supra).

[5] Parshuram v. Tata Industrial Bank [1923] 47 Bom. 915, 25 Bom. L, R. 1083. 80 I. C. 75.

[6] Subramania v. United India Life Insurance Co. [1928] M. 1215, 55 M. L. J. 385.

An adjourned meeting is the same meeting and merely a continuation of it. The proxies appointed for the meeting are available at an adjourned meeting[2].

Notice. Where it is necessary to give notice of an adjourned meeting, when business was begun but not completed at the meeting from which the adjournment took place, the notice need not state the purpose for which the meeting was called[3].

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded [*in accordance with the provisions of clause (c) of sub-section (1) of section 79 of the Indian Companies Act, 1913*], and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

Amendment. In this regulation the words within square brackets have been substituted for the words "by at least three members" by the amending Act II of 1938 which received the assent of the Governor General on 26th February, 1938. The articles of a company shall be deemed to include this regulation ; see s. 17 (2).

Proper mode of declaring company's will. A resolution of the majority of members present at a general meeting is the proper mode of declaring the will of the corporation ; but if all the shareholders, and not a majority only, expressly assent, the absence of a resolution may be immaterial[4]. As to what is an act of the corporation binding the corporation and what constitutes a meeting of the corporation see the case noted below[5].

Show of hands. As regards the importance of a regular show of hands recently stressed by Lord Blanesburgh in the House of Lords, see notes to s. 81 *ante*, p. 203.

Chairman's right. Declaration of the chairman as evidenced by an entry in the minute book is conclusive evidence of the fact that a resolution has, on a show of hands, been carried. In any case the declaration of the chairman is *prima facie* evidence[6]. Where on a show of hands there are two resolutions before a meeting of shareholders—one for the reduction of capital and another for the conversion of the preference shares into ordinary shares—and where there is a right to a poll, the chairman may put the resolutions *en bloc*, if no shareholder requires him to put them separately[7].

The chairman of a general meeting has *prima faice* authority to decide all incidental

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[1] Subramania v. United India Life Insurance Co. [1928] M. 1215, 55 M. L. J. 385.

[2] *Ibid* ; Mac Laren v. Thompson [1917] 2 Ch. 261.

[3] Scadding v. Lorant [1851] 3 H L.C. 418.

[4] Wenlock v. River Dee Co. [1887] 36 Ch. D. 675 n. ; Express Engineering Works [1920] 1 Ch. 466.

[5] Staple of England v. Bank of England [1850] 12 Beav. 433 and the cases cited there.

[6] Wandsworth & Putney Gas Co. v. Wright [1870] 22 L.T. 404.

[7] R. E. Jones, Ltd. [1933] 50 T.L.R. 31.

Prima facie evidence.

questions which arise at such meeting. The entry by him in the minute book of the result of a poll or of his decisions of such questions although not conclusive is *prima facie* evidence of that result or the correctness of the decisions and the onus of displacing that evidence is on those who impeach the entry 1.

Conclusive evidence. The words "conclusive evidence" mean evidence which is not to be displaced and is conclusive as between the parties bound by the minutes 2.

The chairman has discretion in moving that "the question be now put" 3.

Amendment of resolution. An amendment fairly arising on a resolution which is specified in the notice of the meeting must be put to the meeting, and the chairman has no right to refuse it 4.

Where an amendment which a party has a right to move has been rightly and properly dealt with by the chairman, the validity of the resolution as passed remains unaffected 5.

Taking of poll.

Proxies cannot be used on a show of hands 6. A poll is a mere continuation of the meeting at which it was demanded 7. The chairman is justified in closing the doors during the taking of the poll, if it is not an ordinary meeting but a meeting in which special precautions are necessary in view of the conflict between two groups 7.

At common law a person entitled to vote at a meeting has the right to demand a poll 8. Where there is such a right it can be exercised immediately after the chairman's declaration on the result of the show of hands 9.

Demanding poll.

Where the power of demanding a poll is by the articles given to shareholders qualified to vote and holding so many shares, the power is exercisable only by the shareholders present in person; for the holder of proxies is not the holder of the shares included in the proxy 10. A proxy authorizing a person to vote does not authorize him to demand a poll 11, unless the articles otherwise provide.

Where members holding a specified number of shares have the right to demand a poll under the articles and there is a definition clause stating that the singular includes the plural, one member holding the requisite number of shares can demand a poll 12.

Who can vote on poll.

Under this form of articles members not present at the meeting cannot vote on the poll, even if taken subsequently 13. Under an article providing that the poll shall be taken "in such manner as the chairman shall direct," the poll may be taken then and there 14.

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1. *In re* Alliance Bank [1924] 40 C. L. J. 223.
2. Kerr v. John Mottram, Ltd. [1940] Ch. 657.
3. Wall v. London A. Corpn. [1898] 14 T.L.R. 496, [1898] 2 Ch. 469.
4. Torbock v. Westbury [1902] 2 Ch. 871; Betts & Co. v. Macnaghten [1910] 1 Ch. 430.
5. Rebello v. Co-operative N. & T. Co. [1925] B. 105, 26 Bom. L.R. 907.
6. Ernest v. Loma Gold Mines [1906] 2 Ch. 572.
7. Queen v. Wimbledon Local Board [1882] 8 Q.B.D. 459, 464; R. v. D' Oyly (supra).
8. See note 5.
9. Campbell v. Maund [1836] 5 A. & E. 865.
10. Queen v. Govt. Stock Investment Co. [1878] 3 Q.B.D. 442.
11. Haven Gold Mining Co. [1882] 20 Ch. D. 151, 157.
12. Siemens Bros. v. Burns [1918] 2 Ch. 324. As to counting joint holders on a demand for a poll see this case and Cory v. Reindeer S.S. Ltd. [1915] 31 T.L.R. 530.
13. Shaw v. Tati Concessions [1913] 1 Ch. 292; R. v. D' Oyly (supra); but see Horbury Bridge Co. [1879] 11 Ch. D. 109.
14. Chellington Iron Co. [1885] 29 Ch. D. 159.

If the articles contemplate voting in person the chairman can direct the taking of a poll by voting papers 1.

Separate polls.

Where resolutions are voted upon separately and polls are demanded, there must be separate polls 2. Any qualified person may demand a poll 3.

Validity of votes.

Where an article provided that votes tendered at a meeting and not disallowed at that meeting or an adjournment thereof should be deemed valid for all purposes, in the absence of fraud or *mala fides* votes not so disallowed could not be afterwards challenged in legal proceedings 4.

Where an article provides that no objection should be made to the validity of any vote except at the meeting and that every vote, whether given in person or by proxy, not disallowed at any meeting, should be deemed valid for all purposes, the decision of the chairman who in the *bona fide* exercise of the power conferred upon him by the articles refuses to disallow a vote by proxy to which objection is taken at the meeting is final and will not be reviewed by the Court 5.

Right to inspect voting papers.

Where the articles give the shareholder the right to inspect the papers relating to the voting, the Court should ordinarily give them an opportunity of doing so. Such an opportunity need not however be given when it appears that the inspection would not yield any useful result 6.

Meeting under Court's order.

Where a meeting is held under the order of the Court, the chairman is bound to carry out the instructions given by the Court and has a discretion of his own for matters lying outside the scope of such instructions 7. In the last cited case Fawcett J. held that inspection of ballot papers could not be obtained without an express order of the Court. Strong grounds must be shown and the Judge must be satisfied that the application for it was made *bona fide*.

See notes to s. 81.

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Time of taking poll.

In this form of articles the poll may be taken then and there 8. A shareholder must be present personally or by proxy. This principle is not overridden by this regulation 9.

The taking of a poll is not a meeting of the company in the strict sense, but is in law a continuation of the meeting at which the poll was directed to be taken 9. Where there is a breakdown of the arrangement of the poll on the fixed date, that does not put an end to the taking of the poll, because there must be at least a reasonable opportunity to the voters of having the poll taken. The chairman should in such circumstances appoint another date for the poll because if the poll is demanded it

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1. Mc Millan v. Le Roi Co. [1906] 1 Ch. 331.
2. Blair Open Hearth Furnace Co. v. Reigart [1913] 108 L.T. 665, 29 T.L.R. 449.
3. See note 7 last page.
4. Wall v. London & Northern Corpn. [1899] 1 Ch 550; Wall v. Exchange Investment Corpn. [1926] Ch. 143 C. A.
5. Wall v. Exchange Investment Corpn. (supra).
6. Rebello v. Co-operative &c. Co. [1925] B. 105, 26 Bom. L. R. 907.
7. Rebello v. Co-operative &c. Co. (supra).
8. See note 13, last page.
9. Mc Millan v. Le Roi Co. (supra).

must be taken even though the chairman refuses to grant the poll 1. The Court has jurisdiction to entertain a suit by the shareholders against the company in respect of the infringement of their rights when the interests of justice require it 1.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. *On a poll every member shall have one vote in respect of each share or each hundred rupees of stock held by him.*

By the Companies (Amendment) Act, 1936, for the words "On a poll every member shall have one vote for each share of which he is the holder", the words in italics have been substituted.

For cases relating to votes and proxy see notes to s. 76.

Who can vote upon a show of hands.

Unless a poll is demanded, votes of members who are personally present will be counted by a show of hands 2. A member present only by proxy has no right to vote upon a show of hands 3. A company present by a representative under s. 80 will be deemed to be present in person 4. During a state of war an alien enemy cannot vote 5.

Where on a show of hands there are two resolutions before a meeting of shareholders--one for reduction of capital and the other for conversion of preference shares into ordinary shares—and where there is a right to poll, the chairman may put the resolutions *en bloc*, if no shareholder requires him to put them separately 6.

Vote is a right to property.

A shareholder's vote is a right to property and he is entitled to exercise it as he pleases even in a manner adverse to what others may think the interests of the company 7, provided his vote be *bona fide* and not contrary to public policy 8. "Unless otherwise provided by the regulations of the company", observed Lord Davey in *Burland* v. *Earle* 9, "a shareholder is not debarred from voting or using his voting power to carry a resolution by the circumstance of his having a particular interest in the subject matter of the vote."

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1. Srenivasan v. Watrap [1932] M. 100.
2. Horbury Bridge Co. [1879] 11 Ch. D. 109.
3. Ernest v. Loma Gold Mines [1896] 2 Ch. 572, [1897] 1 Ch. 1, overruling Bidwel Brothers [1893] 1 Ch. 603.
4. Kelantan Estates [1920] W. N. 274, 64 S. J. 700.
5. Robson v. Premier Oil Co. [1915] 2 Ch. 124.
6. R. E. Jones Ltd. [1933] 50 T. L. R. 31.
7. Greenwell v. Porter [1902] 1 Ch. 530; Puddephat v. Leith [1916] 1 Ch. 200; Pender v. Lushington [1877] 6 Ch. D. 70.
8. Elliot v. Richardson [1870] 5 C. P. 744; North-West Transportation Co. v. Beatty [1887] 12 App. Cas. 589, 593; Burland v. Earle [1902] A. C. 83, 94.
9. [1902] A. C. 83 P. C.; see also North West Transportation Co. v. Beatty [1887] 12 App. Cas 589.

Right of voting.

Where shares have been transferred to a mortgagee and are registered in his name, he has, as legal owner of the shares, the right of voting which may be exercised as he thinks best, irrespective of any direction by the mortgagor 1. The right can only be determined by an express contract not to exercise it, and in the case of debentures it may be exercised for the debenture-holders 1. A mandatory injunction may however be granted to enforce an agreement by the mortgagee of share to vote in accordance with the wishes of the mortgagor 2.

Executor's vote.

Vote given by an executor on behalf of a deceased member must be disallowed unless he has got himself registered as a member, and it is not possible to distinguish the case of a liquidator or receiver 3.

No subsequent ratification.

A vote is good or bad at the time when it is recorded and no subsequent ratification can cure the defect 3.

Director's right to vote.

Although a director is not entitled to vote as a director in respect of any contract in which he is interested 4, yet he is entitled so to vote as a shareholder at a general meeting 5.

A single shareholder may sue the company to enforce his right to have his vote recorded 6.

Casting vote.

"Where the number of votes on a show of hands is equal, the chairman has no casting vote by common right" 7, but the casting vote has been given to the chairman on a show of hands by reg. 58.

See notes to s. 76 and s. 81.

61. In the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders ; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

Right of splitting.

Joint-holders are entitled to have their holdings split into two or more joint holdings with the names in different order so as to enable all to attend and vote 8.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

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1. Siemens Brothers v. Burns [1918] 2 Ch. 324.
2. Puddephatt v. Leith (supra).
3. Tata Iron & Steel Co. [1928] B. 80, 30 Bom. L. R. 197 : but see Llewellyn v. Kasintoe Rubber Estates [1914] 2 Ch. 670.
4. S. 91 B.
5. East Pant Du Mining Co. v. Merryweather [1864] 2 H. & M. 254 ; cf. North-West Transportation Co. v. Beatty (supra).
6. Pender v. Lushington (supra).
7. Palmer 13th ed. p. 173.
8. Burns v. Siemens Brothers [1919] 1 Ch. 225.

Right after forfeiture. As to whether after forfeiture the new holder's right to vote is affected by a call made on the last holder see the case noted below 1.

64. On a poll votes may be given either personally or by proxy : Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act, 1913, is in force.

The proviso is not in Table A of the English Act. For cases relating to proxy see notes to regs. 65 to 67.

No inherent rights. There is no inherent right of shareholders to vote by proxy, such right being by contract to be construed from the articles 2. Where proxies are allowed by the articles the chairman must count the vote of a person holding proxy as a single vote 3.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless *he is a member of the company.*

By the Companies (Amendment) Act, 1936, the words in italics have been substituted for the words "either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation."

Subsequent shareholder. Under articles which provided that "no person shall be appointed or have authority to act as a proxy who is not a shareholder", a proxy in favour of a person who was not a shareholder when it was signed, but was a shareholder at the date of the meeting, was valid 4.

Non-member's vote. An article which provides that every vote not disallowed at the meeting shall be valid will validate a vote, not objected to at the meeting, given by a proxy who is not a shareholder 5.

Corporation's right. The requirements as to appointment of proxies by corporations being under seal applies only to corporations having a common seal according to English law 5. A corporation may give a proxy under the English law 6. See notes to s. 80.

66. The instrument appointing a proxy and the power-of-attorney or other authority (if any), under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

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1. New Balkis Eersteling v. Randt Gold Mining Co. [1903] 1 K. B. 461, [1904] A. C. 165.
2. Mc Laren v. Thomson [1917] 2 Ch. 261.
3. Ernest v. Loma Gold Mines [1897] 1 Ch. 1.
4. Bombay Burmah Corpn. v. Dorabji [1905] A. C. 213, 29 Bom. 126 P. C.
5. Colonial Gold Reef v. Free State Rand [1914] 1 Ch. 382.
6. Indian Zoedone Co. [1884] 26 Ch. D. 70, 78 ; cf. Queen v. Samuel [1895] 1 Q. B. 815.

Articles of all companies shall be deemed to contain this regulation ; see s. 17(2).

Lodgment of proxy paper.

This regulation provides for the previous lodgment of the proxy paper. Where the articles provide "that the instrument appointing a proxy shall be deposited at the registered office of the company, not less than two clear days before the day for holding the meeting", proxies lodged after the date of an original meeting, but more than two days before the day fixed for an adjournment thereof, cannot be used for the purpose of voting at the adjourned meeting 1.

Where no time is fixed.

If the articles do not provide that proxy papers shall be deposited at the office before the meeting, the vote of the proxy is to be accepted even if he cannot produce the proxy paper at the time 2.

Where two proxies.

Where one proxy is lodged before the expiry of the time and another proxy in favour of another person is lodged after the expiry of the time, the first proxy is not revoked 3.

Filling up names &c.

So long as a proxy is properly stamped at execution, its operative parts, *e. g.*, the name of the proxy and the date of the meeting may be filled in afterwards by any person properly authorized to do so 4, even though at the time of execution the date of the meeting has not been fixed 5. The secretary may fill in the date in the proxy form after it has been returned by the shareholder 6. Undated proxies are valid 7.

Cancellation of stamp.

Any cancellation which renders the stamp on proxy incapable of being used is sufficient. It is not necessary that the person cancelling the stamp should write his name and the date across the stamp 8.

Costs may be paid out of company's fund.

The cost of obtaining signature of proxy papers and of stamp may be paid out of the company's funds 9 if reasonably necessary in the interest of the company. But the principle will not apply if it is done to serve the interests of the directors personally 9.

Director's name.

Directors' names may be inserted as proxies 3 unless there is some provisions in the articles to the contrary 10.

Stamps.

Where a proxy empowers any person to vote at any one general meeting of a company, it may be stamped with an adhesive stamp of two annas 11. For this purpose revenue stamp only is to be used 12, or in the case of a company

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1. Mc Laren v. Thomson (supra) ; see also Shaw v. Tati Concessions [1913] 1 Ch. 292.
2. English Scottish &c. Bank [1893] 3 Ch. 385.
3. Tata Iron & Steel Co. [1928] B. 80, 30 Bom. L. R. 197.
4. Ernest v. Loma Gold Mines [1897] 1 Ch. 1 ; Sandgrave v. Bryden [1907] 1 Ch. 318 ; *Ex. p.* Lancaster [1877] 5 Ch. D. 911.
5. Sandgrave v. Bryden (supra).
6. Ernest v. Loma Gold Mines (supra), overruling Bidwell Bros. [1893] 1 Ch. 603.
7. Tata Iron & Steel Co. (supra) ; but see Llewellyn v. Kasintoe Rubber Estates [1914] 2 Ch. 670.
8. Mc Mullen v. "Sir A. Hickman Steamship Co. [1902] 71 L. J. Ch. 766, 18 T.L. R. 650.
9. Peel v. London & N. W. Ry. Co. [1907] 1 Ch. 5, overruling Studdert v. Grosvenor [1886] 33 Ch. D. 528.
10. English, Scottish &c. Bank (supra).
11. Art. 52, Indian Stamp Act, 1899 as amended by Act 43 of 1923.
12. Vide Rule 13 and the new Rule 16 of the Rules framed under the Stamp Act, and Notification No. 3 dated 31st March, 1934.

having a large number of shareholders coloured impression may be obtained from the Collector of Stamps 1. The instrument of proxy to vote "at any ordinary or extraordinary general meeting of the company" and not merely at the particular meeting is valid 2. But in that case it would be chargeable for stamp duty as a power of attorney under art. 48 of the Indian Stamp Act. The stamp on a proxy to be used at a creditor's meeting is the same as in the case of a general meeting of the members of a company 3.

Proxy is agent for voting.

A person to whom a member gives a proxy is that member's agent for the purpose of voting. The authority of an agent may be revoked expressly or by implication ; but unless and until it is so revoked that authority continues. If a man is present and allows another to act for him, presumably he approves what that other does. But even where a proxy had not been validly revoked in accordance with the articles, the shareholder who had given the proxy is free to attend at the meeting and vote personally ; and when he has done this the vote tendered by the proxy will be rejected. "It would be strange", observed Lord Hanworth, M. R., "if a person in the position of an agent could say to his principal 'you have entrusted to me a power which I will not allow to pass back to you, although you demand the right to exercise it' " 4. Where persons who voted on the amendments, but did not vote on the substantive proposition, but whose votes on the latter were recorded by their proxies, it was held that the votes were good 5.

Unstamped proxies.

Those proxies which are unstamped or upon which the stamps have not been cancelled must be excluded. Any votes recorded on the authority of such proxies go out 6.

See notes to s. 76.

The time provided in Table A of the English Act is forty-eight hours. This limit of 72 hours seems to be unsuitable to this country. It ought to have been reduced to twenty-four hours by the recent amending Acts.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve :—

Company, Limited.

"I of in the district of , being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the day of and at any adjournment thereof."

Signed this day of

Attestation.

If the articles require that a proxy paper shall be attested, an unattested proxy paper will be rejected 7.

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1. Vide Rule 8, ibid.
2. Isaacs v. Chapman [1915] W. N. 413.
3. Vide notification dated 12th January, 1926 published in the Gazette of India, 1926, Part I, p. 132.
4. Cousins v. International Bricks Co. [1931] 2 Ch. 90 (101), 47 T. L. R. 217.
5. Tata Iron & Steel Co. (supra).
6. Ibid.
7. Harben v. Phillips [1883] 23 Ch. D. 14, 22, 31.

Where form is settled by the Court.

Where the form of proxy was settled by the Court, but a certain word was entered by the member signing the proxy and he added other words, but the added words were too vague to have any meaning, it was held that such votes were good 1.

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

Number of directors.

Where the articles provide that until otherwise determined by a general meeting the number of directors shall not be less than five nor more than nine, it is open to the shareholders to vary the number without altering the articles 2. The articles of a company provided that until otherwise determined by a general meeting the number of directors should be not more than three or more than seven : *held*, a resolution at a general meeting that the number of directors should be increased to more than seven was valid and no "special resolution" was necessary 3. In the case of a similar article where the articles of association of the company adopted articles 83 and 85 of the Table A of the English Act of 1908 (corresponding to regs. 83 and 84 of the present Act) it was held distinguishing *Blair Open Hearth Furnace Co.* v. *Reigart* 4 that the power of appointing additional directors had not been delegated to the directors so as to exclude the inherent power of the company in general meeting to appoint directors 5.

A company may be director.

Directors are not necessarily individual persons, and, if the articles so provide, another company may be appointed director 6.

Meeting of subscribers.

There must be a majority of the subscribers in order to determine who shall be the first directors 7. A reasonable notice only is necessary for the meeting of the subscribers in which such determination is to take place 8.

For this purpose a meeting may not be necessary if all the subscribers concur in making the appointment by a resolution in writing 9.

Power of subscribers.

The power given to the subscribers remains in force notwithstanding the first ordinary general meeting after registration has been held without any directors being appointed at that meeting 10. Reg. 49 does not apply to a meeting of the subscribers of the memorandum of association, and there being no special provision in Table A relating thereto, a reasonable notice only of such meeting is necessary 10.

First directors' power.

The first directors may appoint one of their number to the office of manager at a salary on condition that the latter vacates his office of director 11.

Where the articles provided that the governing directors had power to appoint

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1. Tata Iron & Steel Co. (supra).
2. Gur Prasad v. Remeshwar [1933] A. 344, [1933] A. L. J. 290, 143 I. C. 7.
3. Topandas v. Yotmal Electric Supply Co. [1940] S. 87, 190 I. C. 551 relying on Gur Prasad v. Rameshwar, supra.
4. [1913] 108 L. T. 665.
5. Worcester Corsetry, Ltd. v. Witting [1936] Ch. 640.
6. Bulayo's Market & Office Co. [1907] 2 Ch. 458.
7. London &c. Land Co. [1886] 31 Ch. D. 223.
8. John Morley Building Co. v. Barras [1891] 2 Ch. 386.
9. Ex. *p.* Kennedy [1890] 44 Ch. D. 472.
10. John Morley Building Co. v. Barras (supra).
11. Eales v. Cumberland &c. Mine Co. [1861] 6 H. & N. 481.

Additional directors.

additional directors, and a majority of the governing directors appointed additional directors, it was *held* by Bennett, J. that the power must be exercised by all the governing directors, and that the rule of corporation law that when a duty is delegated to a body of persons those persons can act at a meeting by a majority had no application to the case of the articles of association of a company incorporated under the Companies Act 1.

Where partners of a firm are appointed directors.

Where the articles provided that the partners for the time being of a firm "shall be the first managers of the company", it was held that the individuals who were partners of the firm at the time when the company was incorporated remained managers until death, resignation, disqualification or removal, quite irrespective of any changes in the constitution of the firm 2.

Directors not whole time servants.

Unless there is a provision in the articles as to the amount of time a director shall devote to the company, he cannot be compelled to attend to his duties and the company cannot prevent him from becoming a director of a rival company 3.

"The principle will be found", observed Lord Blanesburgh, "in the case usually cited in relation to it although reported only in the Weekly Notes 3, where it was held that it not appearing from the regulations of the company that a director's services must be rendered to that company, and to no other company, he was at liberty to become a director even of a rival company, and it not being established that he was making to the second company any disclosure of information obtained confidentially by him as a director of the first company he could not at the instance of that company be restrained in his rival directorate. What he could do for a rival company, he could, of course, do for himself. And in the present case that principle is not affected by the agreements of each appellant with Levers to devote all his time during business hours to the Niger service" 4.

Fiduciary position of directors.

Directors are "fiduciary donees of their powers" and as such are bound to exercise them so as not to give themselves an advantage over other shareholders 5. They must not make secret profit out of their office 6. "A director is precluded from dealing on behalf of the company with himself and from entering into engagements in which he has a personal interest conflicting or which may possibly conflict with the interest of those whom he is bound by fiduciary duty to protect, and this rule is as applicable to the case of one of several directors as the managing or sole director" 7.

Director's right of indemnity.

Directors are entitled to be indemnified by the company for all debts, expenses and liabilities incurred in the ordinary course of business, and for money borrowed and applied for those purposes 8. A director is also entitled to contribution from such of his co-directors as have concurred in *ultra vires* transactions 9. The right is available against the estate of a deceased contributory 9.

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1. Perrot & Perrot, Ltd. v. Stephenson [1933] 50 T. L. R. 44.
2. Duff v. S. S. "Overdale" Co. [1915] Sc. L. R. 849.
3. London & Mashonaland Co. v. New Mashonaland Co. [1891] W. N. 165.
4. Bell v. Lever Brothers, Ltd. [1932] A. C. 161 at p. 195.
5. Per Rigby L. J. in Alexander v. Automatic Telephone Co. [1900] 2 Ch. 56, 72.
6. Boston D. S. Fishing Co. v. Ansell [1888] 39 Ch. D. 339.
7. North-West Transportation Co. v. Beatty [1881] 12 App. Cas. 589.
8. Hals. p. 233 & cases collected there.
9. Ramskill v. Edwards [1885] 31 Ch. D. 100; Jackson v. Dickinson [1903] 1 Ch. 947.

Directors are not responsible to third persons for the acts of sub-agents of the company properly appointed, unless they have derived benefit from a fraud 1.

De facto directors.

A person dealing with a company is entitled to assume that the directors who are carrying on the business are directors *de jure* whether they have been duly appointed or not 2; but a person who has notice of the irregularity cannot claim the benefit 3.

Where bankers have been put upon inquiry with regard to the appointment of a new director and are guilty of negligence in not investigating the position, they are not entitled to assume that a notice of appointment of an additional director is a valid notice 4.

Directors not trustees.

Directors are not trustees for individual shareholders and may purchase the shares of the latter without disclosing pending negotiations for the sale of the company's undertaking 5.

Knowledge of common director.

As to the knowledge of a common director to companies the following observation of Mellish L. J. should be borne in mind: "I cannot think that because he was a common director to the two companies, we are on that account to say that one company has notice of everything that is within the knowledge of the common director and which knowledge he has acquired as director of the other company" 6. But where A company guarantees the losses incurred on behalf of B company and C is owner of A company and director of B company, C is bound to communicate to A company his knowledge of the losses incurred by B company 7.

Dispute.

If owing to disputes on the governing body the affairs of a company cannot be carried on, the Court will interfere by injunction and the appointment of a receiver, until a fresh governing body is appointed 8.

The liabilities of the directors are extinguished by the dissolution of the company, unless it is set aside by the Court 9.

For other cases see notes to ss. 2 (5), 83A, 83B, 85, 86 and 91A.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

Power to fix director's remuneration—by whom exercisable.

The decision of what remuneration the directors are to have for their services is not a part of the business of the company so as to make the powers of the company as to the remuneration of the directors exclusively exercisable by the latter. When the remuneration of a director has been fixed by the company under this regulation, the company has power to reduce his remuneration when it thinks fit 10. A company with power from time to time to fix the remuneration of the directors can discriminate between directors with

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1. Weir v. Bell [1878] 3 Ex. D. 238 C. A.
2. Mahony v. East Holyford Ry. Co. [1875] 7 H. L. 869; County Life Assurance Co. [1870] 5 Ch. App. 288.
3. Howard v. Patent Ivory Co. [1888] 38 Ch. D. 156.
4. B. Liggett Ltd. v. Barclay's Bank [1928] 1 K. B. 48.
5. Percival v. Wright [1902] 2 Ch. 421 See however Allen v. Hyatt [1914] 30 T. L. R. 444.
6. Merseilles Extension Ry. Co. [1891] 7 Ch. App. 161, 168.
7. Sree Meenakshi Mills v. Ratilal [1941] B. 108, 43 Bom. L. R. 53 relying on Hampshire Land Co. [1896] 2 Ch. 743 and Pratt (Bombay), Ltd. v. Sassoon & Co. [1936] B. 62, 37 Bom. L. R. 978.
8. Featherstone v. Cooke [1873] 16 Eq. 298.
9. Coxon v. Gorst [1891] 2 Ch. 73.
10. Foster v. Foster [1916] 1 Ch. 532.

regard to the amount of their remuneration [1]. If the remuneration is provided in the articles it cannot be changed without a special resolution [2].

Division of remuneration and time of payment.

Where the articles provide that there should be allowed to each of the directors out of the company's funds a certain sum per annum as remuneration to be paid at such times as the directors may determine, it is a condition precedent to the right of a director to sue for remuneration in respect of a year's service that the directors should determine the time of payment [3], or how the remuneration is to be divided [4]. No individual director can sue the company for his fees until the directors have made a formal division of the amount available [5].

Directors can not get travelling allowance.

A director is not entitled to any remuneration beyond what has been sanctioned by the articles for doing an act which would be his duty as a director to do [6]. Directors are not entitled to get travelling expenses unless the payment is expressly authorized by the articles or by the company in general meeting [7], even though they be entitled to be indemnified against all expenses [8].

Quantum meruit.

A director who after vacating his office continues to act as a director, is not entitled to a *quantun meruit* for his services, and if paid, the company can recover the amount [9]. The obligation to pay on a *quantun meruit* basis does not however depend on an inference of fact from the conduct of the parties, but on an inference which the law imposes on the parties where work has been done or goods have been delivered under what purports to be a binding contract but is not so in fact. The law imposes on the party accepting such service or such goods the obligation to pay for them [10].

Term of service.

Remuneration "at the rate of" so much per annum voted at the general meeting accrues from the date of the meeting [11] and can be recovered for broken part of a year [12]. But if the terms on which the directors are appointed provide for so much per annum as remuneration, a director is entitled to remuneration only for each complete year of service [13]. Articles not being a contract between the company and the directors, an alteration of the articles cannot retrospectively affect the terms as to services already performed [14].

In a voluntary winding up the directors continue as such after the passing of the resolution for winding up [15]. So where a full year's service is required to entitle a director to remuneration, service after commencement of the winding up may count to make up the year [16].

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[1] Foster v. Foster [1916] 1 Ch. 532.

[2] Boschoek Proprietary Co. v. Fuke [1906] 1 Ch. 148.

[3] Caridad Copper Mining Co. v. Swallow [1902] 2 K. B. 44.

[4] Morrel v. Oxford Cement Co. [1910] 26 T. L. R. 682 : Joseph v. Sonora L. & Timber Co. [1918] 34 T. L. R. 220.

[5] Joseph v. Sonora L. & Timber Co. [1918] 34 T. L. R. 220.

[6] Dikshit & Co. v. Mathura Prasad [1925] 47 All. 94, 22 A. L. J. 883.

[7] Young v. Naval & Military Society [1905] 1 K. B. 687.

[8] Marmor Ltd. v. Alexander [1908] S. C. 78.

[9] Bodega Co. [1904] 1 Ch. 276 ; Consolidated Nickel Mines [1914] 1 Ch. 883.

[10] Craven-Ellis v. Canons, Ltd. [1936] 52 T. L. R. 657 C. A.

[11] London Gigantic Wheel Co. [1908] 24 T. L. R. 618.

[12] Swabey v. Port Darwin Co. [1901] 1 Meg. 385 ; Diamond v. English Sewing Cotton Co. [1922] W. N. 237.

[13] Salton v. New Beeston Co. [1899] 1 Ch. 775 ; Mc Connell's Claim [1901] 1 Ch. 728 ; Inman v. Ackroyd & Best, Ltd. [1901] 1 Q. B. 613 ; Shaws, Bryant & Co. [1901] W. N. 124, 45 S. J. 580.

[14] Swabey v. Port Darwin Co. (supra).

[15] See s. 208A (2).

[16] Shaws, Bryant & Co. (supra).

Resolution to forego remuneration.

If a director take part in a resolution of the board determining that no remuneration is to be paid to the directors for a particular year, he cannot claim any remuneration for that year 1. Such resolution may however be rescinded by a subsequent resolution and if this is done, remuneration will be payable as from the date of the rescinding resolution 2. Neither uselessness of the director's services, nor that they have diminished, can be successfully pleaded as a bar to the claim.

Remuneration is not due in the character of member.

The remuneration is not due to a director in his character of a member of the company and is provable as a debt on winding up in competition with the ordinary creditor 3. Payment to a person for special skill and attention is none the less a provable debt, because the person is a director, or because under the articles a director must be a member 4.

Director's fees.

There is no presumption that the directors' fees are to be paid out of profits 5. The meaning of the words "profits" in an article providing remuneration of the directors by a percentage of profits was discussed in *Frames v. Bultfontein Mines Co.* 6.

Set-off.

Where a company owed to its directors his fees and the directors owed to the company interest on his share calls, the company could not adjust the fees with interest without the director's consent 7. "By common law there is no right of set off between parties mutually indebted, in the absence of an agreement to that effect. And the rule of equity follows the law, unless there are special circumstances connecting the debts besides the mere fact of mutuality on which the relief can be founded" 8. As to lien see notes to reg. 9 *ante.*

Cestui que trust of a director.

A director's remuneration is not profit derived from his qualification shares. Where he is a trustee for those shares his *cestui que trust* is not entitled to the amount of the remuneration 9.

Directors who in a debenture-holder's action are appointed receivers and managers at a remuneration continue as directors and are nevertheless entitled to their renumeration as directors 10.

Remuneration at a percentage of 'profits.'

Where a director, managing director or manager, is entitled to be paid a percentage of "profits," it is a question of construction what "profits" means. *Prima facie* it means profits arising from the carrying on of the company's business as a going concern and the percentage is not payable on profits made by the sale of the whole undertaking of the company in winding up 11, but is payable on profits in kind earned while the company is a going concern, even though not converted into cash until the winding up 12. As income tax payable by the company is part of its profits 13, the percentage is to be calculated on the profits before deduction of the tax 14.

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1. Mc Connell's Claim (supra).
2. Consolidated Nickel Mines (supra).
3. *Ex. p.* Beckwith [1898] 1 Ch. 324; Dover Coalfields Extension Co. [1908] 1 Ch. 65.
4. Dale & Plant Ltd. [1890] 43 Ch. D. 2.55.
5. Lundy Granite Co. [1872] 26 L. T. 673.
6. [1891] 1 Ch. 140.
7. Punjab Electric Power Co. v. Suraj Kishen [1936] L. 62.
8. Leake on Contracts 8th ed. p. 779.
9. Dover Coalfields Extension Co. (supra).
10. South-Western of Venezuela Ry. Co. [1902] 1 Ch. 701.
11. Rishton v. Grissel [1867] 5 Eq. 326; Frames v. Bultfontein Mining Co. [1891] 1 Ch. 140.
12. Spanish Prospecting Co. [1911] 1 Ch. 92.
13. Ashton Gas Co. v. A. G. [1906] A. C. 10; [1904] 2 Ch. 621.
14. Johnston v. Chestergate Hat Manfg. Co. [1915] 2 Ch. 338.

If a director's remuneration for extra work, *e.g.*, as overseas director, has not been determined by the general meeting, he cannot receive it, although he has performed the duties in accordance with the agreement signed and sealed by the directors, but must repay to the company on its counter claim the money paid to him under the agreement 1.

The fact that some of the directors are remunerated as receivers and managers in a debenture-holder's action does not disentitle them to their remuneration in addition as directors from the time when they were appointed receivers and managers until commencement of the winding up 2.

Balance-sheet no acknowledgment.

A balance-sheet adopted and signed by directors pursuant to s. 133 is not an acknowledgment or written promise by the company or its agents to pay the director's fees 3.

For other cases relating to the directors' remuneration see notes to s. 83A.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 85 of the Indian Companies Act, 1913.

Qualification.

A company cannot alter the qualification for its directors except by passing a special resolution 4. A director must hold his qualification shares in such a way that the company may safely deal with him as owner of the shares 5. Shares held jointly with any other person may be a sufficient qualification 6. A director who is entered on the register as holder of shares as liquidator of another company is not qualified 7.

For other cases see notes to ss. 84 and 85.

Powers and duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Indian Companics Act, 1913, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

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1. Kerr v. Marine Products [1928] 44 T. L. R. 282.
2. South-Western of Venezuela Ry. Co. (supra).
3. Coliseum (Barrow) Ltd. [1936] 2 Ch. 44.
4. Navnitlal v. Scindia Steam Navigation Co. [1927] B. 609, 29 Bom. L. R. 1362; see also Andrews v. Gas Meter Co. [1897] 1 Ch. 361.
5. Sutton v. English & Colonial Co. [1902] 2 Ch. 502.
6. Grundy v. Briggs [1910] 1 Ch. 444.
7. Boschoek Proprietary Co. v. Fuke [1906] 1 Ch. 148.

The articles of a company shall be deemed to contain this regulation ; see s. 17 (2).

Managing. Managing the business of the company includes institution of suits on its behalf when it becomes necessary in the course of management 1.

Director's duty. A director's duty requires him to act with such care as is reasonably to be expected from him having regard to his knowledge and experience. He is not bound to bring any special qualification to his office, but if he is acquainted with the particular business carried on by the company he must give the company the advantage of his knowledge. He is not responsible for damages occasioned by errors of judgment 2.

Company bound by his acts. A company is bound by the acts of the directors, however irregular they may be, provided they are authorized by the company's constitution 3. Where at a meeting of the directors of a company one of the body was authorized by a power of attorney to be executed by two of the directors to appoint or dismiss servants of the company and pursuant to the power of attorney the general manager was dismissed by the director so authorized, it was held that the order of dismissal was valid though some of the directors continued to recognize him as such 4.

They are trustees but not for individual members. The directors are trustees of the powers committed to them, as for instance, the power of approving transfer of shares, of allotting shares, of employing the funds of the company, of making calls or receiving payments in advance of calls, or forfeiting shares, and as trustees they may be rendered liable for their misuse 5. They are not however trustees for individual members 6.

Directors' powers. This form of articles clearly delegates to the directors power to do every thing that the company can do except where the authority of a general meeting of the company is expressly prescribed, and such delegation would include power to issue preference shares 7. The directors can do all acts necessary for management of the company 8, including giving gratuity to its servants 9. But when the undertaking of the company is sold, neither the directors nor the majority of the shareholders can give such gratuity against the wishes of the minority 10.

It is within the powers of the directors to compromise a suit in the interest of the company even if the suit is ill-founded 11. An action by the company should be commenced only by the directors 12.

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1. Ebrahim v. South India Industrials [1938] M. 962, [1938] 2 M. L. J. 568.
2. Brazilian Rubber Estates [1911] 1 Ch. 425.
3. Spackman v. Evans [1868] 3 H. L. 171.
4. Gurprasad v. Rameshwar [1933] A. 344, [1933] A. L. J. 290, 143 I. C. 7.
5. Buckley, 10th ed. p. 635 and cases collected there. For cases where the directors were held liable for misapplication of the company's funds see *ibid* pp. 635 & 640.
6. Percival v. Wright [1902] 2 Ch. 421 ; Wilson v. Alacunliffe [1896] 18 All. 56 ; Bath v. Standard Land Co. [1911] 1 Ch. 618 ; cf. Allen v. Hyatt [1914] 30 T.L.R. 444.
7. Campbell v. Rofe [1933] A. C. 91 P. C. at p. 99.
8. West of England Bank [1880] 14 Ch. D. 317.
9. Hampson v. Price's P. Candle Co. [1876] 34 L. T. 711 ; Henderson v. Bank of Australasia [1889] 40 Ch. D. 170.
10. Hutton v. West Cork Ry. Co. [1883] 23 Ch. D. 654 ; see also Stroud v. Royal Aquarium [1903] W.N. 146 ; Kaye v. Croydon Tramways Co. [1898] 1 Ch. 358 (367), 89 L. T. 243.
11. Yates v. Cyclists' Touring Club [1908] 24 T.L.R. 581.
12. La Compagnie de Mayville v. Whitley [1896] 1 Ch. 803.

The powers vested in a board of directors by the articles cannot be interfered with by the shareholders as such. If the shareholders are dissatisfied with what the directors do, their remedy is to remove them in the manner provided by the articles. But so long as a board of directors exists and particular powers are vested in it by the articles, the directors are entitled to exercise those powers without interference by the shareholders 1.

Company in general meeting cannot take the conduct of business out of their hands.

Unless the articles require the directors to conform to directions given by the company in general meeting, the latter cannot, except by special resolution, take the conduct of the business out of the hands of the directors or to compel them to adopt a particular line of action, such as sealing a draft deed or effecting a sale of the company's property 2. But the expression "business of the company" does not include the fixing of the directors' own remuneration 3. Directors cannot by contract deprive themselves of the power to control a manager so as to confer power on him to the exclusion of themselves 4.

Authority is circumscribed by memo. & articles.

Where the authority of the directors is defined by the memorandum or the articles of association they have no power to go beyond this or to undertake any transaction outside the scope of the company's business. But not only do their acts bind the company when done within the scope of their authority, but also where, however irregular, they belong to a class of acts which is authorized by the constitution of the company. A company is bound by its dealings with strangers who act *bona fide* with the company. A company is liable for all acts done by its directors even though unauthorized, provided that such acts are within the apparent authority of the directors and not *ultra vires* 5. See notes to s. 83A, *ante.*

Ratification of directors' acts.

If the act of the directors is not *ultra vires* it can be ratified by the company; *but* such ratification of acts done by the directors in excess of their authority given to them by the articles does not extend to give validity to acts of similar character done subsequently 6. Power given by the articles to directors to raise a loan justifies a mortgage 7.

Indemnity clause in articles.

Where the articles provided that "no director shall be liable for any loss, damage or misfortune whatever which shall happen in execution of the duties of his office or in relation thereto unless the same happens through his dishonesty", it was held that the provision was not illegal and that the articles were intended to relieve the directors, who acted honestly, from liability for damages occasioned even by their negligence when such negligence was not dishonest 8.

Outsider acting in good faith.

A bank acting in good faith and without notice of any irregularity is not bound before honouring the cheques to inquire into the state of the accounts between the company and its managing director 9.

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1. Jagadish v. Paras Ram [1941] A. 360 (363), [1941] A. L. J. 483.
2. Automatic Self-Cleansing Filter Co. v. Cunninghame [1906] 2 Ch. 34; Gramophone & Typewriter v. Stanley [1908] 2 K.B. 89; Salmon v. Quin & Axtens [1909] A.C. 442.
3. Foster v. Foster [1916] 1 Ch. 532.
4. Horn v. Henry Faulder & Co. [1908] 99 L. T. 524.
5. Ram Baran v. Muffassil Bank [1925] A. 206, 83 I.C. 142.
6. Irvine v. Union Bank of Australia [1877] 2 App. Cas. 366.
7. Karnot v. Walter [1882] 9 Cal. 14.
8. Brazilian Rubber Estates [1911] 1 Ch. 425.
9. Bank of New South Wales v. Goulburn Valley &c. Ltd. [1902] A. C. 543.

Liability to pay preliminary expenses.

It has been held in England that under this form of articles the company cannot be sued if the directors do not pay the preliminary expenses, even though it has taken benefit of the work done under a contract made before its formation [1]. For a discussion of the Indian law in this respect see pp. 102-103.

For other cases see notes to ss. 83A and 100.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

Managing director's position.

A managing director is an ordinary director entrusted with special powers [2]. He is not a clerk or servent so as to be entitled to salary in preference to other creditors [3]. Persons dealing *bona fide* with a managing director are entitled to assume that he has all the powers which according to the constitution of the company a managing director can have [4]. Where a company undertakes to sell the shares belonging to a shareholder, the position of the managing director in negotiating and completing the sale is one of fiduciary character. Utmost good faith should be observed in such cases [5]. If any advantage is obtained by the managing director as the fruit of the sale, the benefit must go to the owner of the shares [5].

Appointment.

Directors cannot appoint a managing director [6] or delegate their powers and duties to other persons [7] in the absence of provisions in the articles empowring them to do so [8]. Where powers are delegated under the provisions of the articles, the directors are absolved from liability for relying on the delegates [9]. This regulation does not expressly authorize any delegation of powers, but the authority is implied under this regulation [10]. Such delegation may certainly be obtained under reg. 91 *post*. But the appointment or delegation must be made at a meeting where proper quorum is present excluding the interested directors [11].

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[1] English & Colonial Produce Co. [1906] 2 Ch. 435, 442; Clinton's Claim [1908] 2 Ch. 515; Empress Engineering Co. [1880] 16 Ch. D. 125; Rotherham Alum Co. [1883] 25 Ch. D. 103. But see Hereford Wagon Co. [1876] 2 Ch. D. 621.

[2] Newspaper Proprietary Syndicate [1900] 2 Ch. 349, 350.

[3] *Ibid*; Normandy v. Ind, Coope & Co. [1908] 1 Ch. 84 & s. 230 and notes; Dehra Dun Mussoorie E. Tramway Co. v. Jagamander [1932] A. 141, [1931] A. L. J. 1038, 134 I. C. 244.

[4] Dehra Dun Mussoorie E. Tramway Co. v. Jagamandar (supra).

[5] Co-operative Co. v. Bhagwan Das & Co. [1930] A. 615, [1930] A. L. J. 1396, 128 I. C. 299

[6] Boschoek Proprietary Co. v. Fuke [1906] 1 Ch. 148, 159.

[7] Howard's case [1866] 1 Ch. App. 561.

[8] Horn v. Henry Faulder & Co. [1908] 99 L. T. 524.

[9] Weir v. Bell [1878] 3 Ex. D. 238 C. A.

[10] See Cartmell's case [1874] 9 Ch. App. 691, 695.

[11] Ramaswami v. Madras Times &c. Co. [1915] 38 Mad. 991.

Where the power is given to the directors to appoint a managing director for such period as they think fit and to revoke the appointment, they can by agreement appoint a managing director for life, and unless they reserve power in the agreement to revoke the appointment, the company cannot dismiss the managing director, and if it does so he will be entitled to damages 1. Where a managing director is appointed by agreement for a certain number of years at a certain salary and before the expiration of the period a resolution supported by the managing director is passed for voluntary winding-up of the company as by reason of its liabilities it cannot continue its business, the managing director is entitled to damages for breach of the agreement 2. If a life director is appointed managing director without specification of the term for which he will hold the office, he will be liable to be removed by the directors 3.

When it is admittedly desirable that a managing director should be appointed, but the directors are unable, owing to internal friction and faction, to make the appointment under the powers conferred by the articles, the company in general meeting has power to make the appointment 4.

By an agreement between a company and a person, who was then a director of the company, the latter was appointed managing director for a term of ten years. Art. 91 of the company's articles of association provided that a managing director should "subject to the provisions of any contract between him and the company be subject to the same provisions as to......removal as the other directors of the company and if he cease to hold the office of director he shall *ipso facto* and immediately cease to be a managing director." Art. 105 gave the company the power to remove a director before the expiration of his period of office. It was held by the House of Lords (Viscount Maugham and Lord Romer dissenting) that it was an implied term of the said agreement that the company should not remove the managing director from his position as director during the term of years for which he was appointed managing director, that the wrongful removal of him from his position as director and managing director was the company's act none the less because it required two acts and not one only for its accomplishment and that in respect of the breach of agreement the managing director was entitled to the damages (12,000 *l.*) awarded by the trial judge 5. If a person enters into an arrangement which can only take effect by the continuance of an existing state of circumstances, there is an obligation on his part to do nothing of his own motion to put an end to that state of circumstances under which alone the arrangement can be operative 6. The agreement with the managing director of a company provided: "The managing director shall not, at any time, while he shall hold the office or afterward solicit, interfere with or endeavour to entice away from the company any person, firm or company who at any time during or at the date of the determination of the employment of the managing director were customers of or in the habit of dealing with the company." Shortly after determination of the agreement the defendant (managing director) opened a business of a similar nature. In an action by the company to enforce the contract the Court of Appeal (reversing the decision of Farwell J.) held

Agreement.

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1. Nelson v. James Nelson & Sons [1914] 2 K. B. 770.
2. Fowler v. Commercial Timber Co. [1936] 2 K. B. I. C. A.
3. Foster v. Foster [1916] 1 Ch. 532.
4. Foster v. Foster (supra) ; see also Barron v. Potter [1914] 1 Ch. 895.
5. Southern Foundries (1926) Ltd. v. Shirlaw [1940] A. C. 701.
6. Ibid, per Lord Atkin.

that the covenant was not wider than was reasonably necessary for the protection of the plaintiff company's trade, and was therefore enforceable by injunction 1.

Under ss. 21 and 57 of the Specific Relief Act I of 1877 a limited company cannot be restrained by injunction from dispensing with the services of the managing agents, even when the contract of service provides that the managing agents are only to be removed in a specified manner and after a specified period. Nor can the shareholders be restrained by injunction from considering the question of such removal at an extraordinary general meeting of the company. The remedy of the managing agents for dismissal, if wrongful, lies in a suit for damages 2. Where in pursuance of the articles of association acted upon by the company a member was appointed its managing director and acted for 11 years in that capacity, the articles constituted an implied contract between the member and the company. In a suit by the managing director, who was removed by the company by a special resolution, for a declaration that he is still the managing director, it was found that the resolution removing him from office was *ultra vires*, consequently managing director was held entitled to the declaration and the same could not be refused on the ground that the company might subsequently remove him from office by a valid resolution 3.

Powers.

Where there are no provisions in the articles or in the contract appointing managing agents that the powers thereby conferred on them should be subject to the control or assent of the directors, the latter have no right to interfere otherwise than as representing the company in virtue of their general power of management 4.

Where general power of attorney from a company in favour of the managing director or manager is relied upon, it would be necessary to show from the articles or the memorandum of association that the directors can give such a power of attorney 5.

Where the articles provided that "deeds, hundis, cheques, certificates and other instruments shall be signed by the managing director, the secretary and the working director on behalf of the company and shall be valid", a mortgage purporting to be executed by the company but signed not by the managing director but by the other two officials mentioned above was invalid notwithstanding the fact that the mortgagee might have acted in good faith and the money might have been applied to the purposes of the company. The mere fact that the services of the managing director was no longer available to the company would not make the execution valid 6.

Duties.

The duties of a managing director are of a higher standard than of an ordinary director, and where by any act of the managing director, which is inspired by motives of personal gain, the company suffers loss, the managing director is liable to make good such loss 7.

A company is not responsible for acts done by its managing director, when he

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1. Gilford Motor Co. v. Horne [1933] Ch. 935 C.A ; see also Spink (Bournemouth) Ltd. v. Spink [1936] 1 Ch. 544.
2. N. C. Sircar & Sons v. Baraboni Coal Co. [1911] 16 C. W. N. 289 ; see Gulab Singh v. Punjab Zemindara Bank [1940] L. 243, 190 I. C. 819.
3. Gulab Singh v. Punjab Zemindara Bank, (supra).
4. Nusserwanji v. Gordon [1882] 6 Bom. 266.
5. Abdul v. Mafassal Bank [1926] A. 497, 24 A. L. J. 593.
6. Venkataswamy v. Ramamurthy [1934] M. 579, 67 M. L. J. 327.
7. Bank of Oudh v. Nawab Ali Khan [1926] O. 153, 92 I. C. 50.

Acting in private capacity company not responsible.

is acting in his private capacity and not in pursuance of any authority given by the company 1. The manager or managing director of a mill company has no implied authority to purchase on behalf of the mill the liability of a stranger and still less that of his own manager or managing partner in a private transaction of his own 2.

Arrears of salary.

Arrears of salary due to a managing director are not debts due to him in his character as a member within the meaning of s. 156, sub-s. 1 (vii) 3.

Outsiders dealing *bona fide* with managing director.

Persons dealing *bona fide* with a managing director are entitled to assume that he has all such powers as he purports to exercise, if they are powers which according to the constitution of the company a managing director can have 4. All persons dealing with a company must ascertain the limitations imposed by the articles, but they are not bound to draw any direct or obvious inferences from the provisions thereof, nor is there any obligation cast upon them to see that such directors are properly appointed, or that they have acted exactly in accordance with the manner therein prescribed 5.

A bank acting in good faith may credit to the managing director's own overdrawn account sums drawn from the company's accounts by cheques signed by the managing director 6.

The grant of a permanent lease may be within the scope of the apparent authority of a managing director 7. Outsiders are entitled to presume that the managing director has acted regularly within the scope of his authority in the manner provided in the articles 7.

A company suing for a declaration that they are the managing agents of another company must ask consequential relief of injunction to restrain the other company to interfere with the discharge of their duties as managing agents, otherwise no declaration will be granted by the Court 8.

Retirements.

If there is no provision in the articles of the managing director's exemption from retirement by rotation, he ceases to be the managing director on his failure to be re-elected after retirement, even if the directors have purported to appoint him for a fixed period 9. But where it is an implied term of the agreement between the company and the managing director that the latter should not be removed from the position of director during the term of years for which he was appointed, he cannot be removed from the position of managing director during that term, even by altering the articles of association 10.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes

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1. Mc Gowan & Co. v. Dyer [1873] 8 Q. B. 141.
2. Motilal v. Bombay Cotton Manufg. Co. [1915] 19 C. W. N. 621, 21 C. L. J. 524.
3. Dale & Plant Ltd. [1889] 43 Ch. D. 255.
4. Ram Baran v. Maffassil Bank [1925] A. 206, 83 I. C. 142; see also Biggerstaff v. Rowatt's Wharf [1896] 2 Ch. 93, 102; Abdul v. Maffasil Bank (supra).
5. Ram Baran v. Maffassil Bank [1925] A. 206, 83 I. C. 142; see also Biggerstaff v. Rowatt's Wharf [1896] 2 Ch. 93, 102; Abdul v. Maffasil Bank (supra).
6. Bank of New South Wales v. Goulburn Valley &c. Ltd. [1902] A.C. 543.
7. Khulna Loan Co. v. Jahir [1914] 24 I.C. 209.
8. Boulton Bros. v. New Victoria Mills [1929] A. 87, 26 A. L. J. 1119.
9. Bluett v. Stutchbury's Ltd. [1908] 24 T. L. R. 469.
10. Shirlaw v. Southern Foundries Ltd. [1939] 2 K. B. 206, on appeal to the House of Lords, Southern Foundries (1926) Ltd. v. Shirlaw [1940] A. C. 701.

of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

This regulation limits the director's authority to borrow. It requires that the directors shall so restrict their borrowing that the amount for the time being remaining undischarged shall not exceed the limit specified. The intention of the regulation is not satisfied by treating it as a direction that beyond the specified limit further borrowings, though not prohibited, are to be expended in reduction of existing loans 1. Where however the loans, although in excess of the authority of the directors are not *ultra vires*, the money having been received and applied for its purposes, the official liquidator of the company cannot, during the winding up proceedings, reduce the balance outstanding at the date of liquidation by disputing the liability of the company to pay the whole sums advanced 1. The words "for the time being" do not mean "when the claim is made." The regulation in terms fixes the limit at any time 2.

74. The directors shall duly comply with the provisions of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, and to keeping a register of the directors, and to sending to the registrar an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notification of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and, of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

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1. T. R. Pratt (Bombay) Ltd. v. M. T. Ltd. [1938] P. C. 159, [1938] Bom. 421, 42 C. W. N. 733.
2. T. R. Pratt (Bombay) Ltd. v. E. D. Sassoon & Co. [1936] B. 62, 37 Bom. L. R. 978, 161 I.C. 126.

Responsibility of a director. A director who is present at a board meeting at which the minutes of a previous meeting are confirmed, even though he be a party to this confirmation, is not thereby made responsible for what was done at such previous board meeting 1.

Notice. As to notice of matters referred to in minutes read at a meeting in which a director was present see the cases noted below 2.

See notes to s. 83.

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose ; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Seal without authority. A document will be regarded as a forged one if the seal is affixed to it without the authority of a resolution of the board 3. If the seal be affixed under the authority of a board meeting at which a quorum is not present, the execution will, as between the company and persons who had not notice of the irregularity, be good 4 ; but if the seal has been wrongfully affixed the company will not be bound 5. Negligence of a company for the purpose of an estoppel must be such negligence as is immediately connected with the act by which the loss arises 6. As affixing the seal is not a matter in which normally a single director would have power to act without the authority of the board, a person is not relieved from the obligation to inquire whether the formalities required by the article has been complied with 7.

Any person who has power to manage the affairs of the company has power to affix the seal 8. A contract to refer to arbitration any dispute which might arise between a company and an individual is not illegal, because it is not under the company's seal 9.

An agreement 10 or a mortgage deed 11 does not require seal. If a document under seal is not necessary, then a mere defect in the manner of affixing the seal will not render the document invalid (see notes 10 & 11.)

See notes to ss. 29 and 88.

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1. Lands Allotment Co. [1894] 1 Ch. 616.
2. Ashhurst v. Mason [1875] 20 Eq. 225 ; cf. National Bank of Wales [1899] 2 Ch. 629, 644.
3. Ruben v. Great Fingall Consolidated [1906] A.C. 439 ; South London Greyhound Race Course Ltd. v. Wake [1931] 1 Ch. 496, 144 L.T. 607.
4. County of Gloucester Bank v. Rudry Merthyr Co. [1895] 1 Ch. 629 ; the principle of Royal British Bank v. Turquand [1856] 6 E. & B. 327 will be applicable.
5. See note 3 above.
6. Bank of Ireland v. Evans's Charities [1855] 5 H. L. C. 389 ; Staple of England v. Bank of England [1888] 21 Q. B. D. 160 ; cf. Bank of England v. Vagliano Brothers [1891] A. C. 197.
7. South London Greyhound Race Course Ltd. v. Wake (supra).
8. Barned's Banking Co. [1867] 3 Ch. App 105 ; Biggerstaff v. Rowatt's Wharf [1896] 2 Ch. 93.
9. Ganges Sugar Works v. Nuri Mia [1915] 37 All. 273, 13 A. L. J. 312.
10. Probodh v. Road Oils, Ltd. [1930] C. 782, 57 Cal. 1101, 34 C. W. N. 570, 127 I. C. 545.
11. Dehra Dun Mussorie E. Tramways Co. v. Jagamander [1932] A. 141, [1931] A. L. J. 1038, 134 I. C. 244.

Disqualifications of Directors.

77. The office of director shall be vacated if the director—

(*a*) *fails to obtain within the time specified in sub-section* (1) *of section* [85] *of the Indian Companies Act,* 1913, *or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment* ; *or*

(*b*) *is found to be of unsound mind by a Court of competent jurisdiction* ; *or*

(c) *is adjudged insolvent* ; *or*

(*d*) *fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made* ; *or*

(*e*) *without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker* ; *or*

(*f*) *absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months, whichever is longer, without leave of absence from the board of directors* ; *or*

(*g*) *accepts a loan from the company* ; *or*

(*h*) is concerned or participates in the profits of any contract with the company ; or

(*i*) is punished with imprisonment for a term exceeding six months :

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director, but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

By the Companies (Amendment) Act, 1936, the original clauses (e) and (f) have been re-lettered as clauses (h) and (i) respectively and for clauses (a) to (d) the new clauses (a) to (g) have been substituted. The original clauses (a) to (d) were as follow :

(*a*) ceases to be a director by virtue of section 85 of the Indian Companies Act, 1913 ; or

(*b*) holds, or any partner of his, or the firm of which he is a member, holds, any other office of profit under the company except that of managing director or manager ; or

(c) is adjudged insolvent ; or

(*d*) is found lunatic or becomes of unsound mind ; or.

In cl. (a) the figure within square brackets has been substituted for the figure "84" by the amending Act II of 1938, as figure "84" was a mistake.

See the new s. 86 I.

Directors appointed for a definite period.

A company whose directors are appointed for a definite period has no inherent power to remove them before the expiration of that period. If the articles contain no power to remove directors before the expiration of their period of office, but if they authorize the shareholders by special resolution to alter any of the articles, there must be a separate special resolution altering the articles so as to give power to remove directors before a resolution can be passed to remove any of them 1.

Resignation.

Subject to the articles of association a director is entitled to resign his office and cannot withdraw his resignation without the company's consent 2. After his resignation has been accepted by the board a director ceases to be liable for any report made or dividend declared, even though he be named as a director in the report 3. Where the articles provide that the office of a director should *ipso facto* be vacated if by notice in writing to the company he resigns his office, oral resignation is sufficient. "I see no reason in law," observed Bennett J., "why the contract of service between the company and its directors should not be terminated by the same means as that by which the contract of service between two individuals may be terminated, and I see no ground in law for saying that where a written contract has been made for service which requires a written notice on either side before it can be terminated, it cannot be terminated by word of mouth by mutual consent between the parties 4.

Absence from board meeting.

Where the articles provide that a director's office will be vacated on his absenting himself from board meeting for a certain period, the expression "absenting himself" means being absent voluntarily or deliberately 5. Time does not begin to run until a meeting has been held which he should have attended 6.

Happening of a specified event.

Where the articles provide that a director shall vacate his office on the happening of a specified event, the office falls vacant on the happening of such an event and the company cannot waive the event or condone the act 7.

Cl. *(a)*. See s. 85 and notes thereto.

Insolvency.

Cl. *(c)*. In order that a director should be insolvent within the meaning of this regulation it is not necessary that there should be a definite act of insolvency done on a particular day from which it can be said that the insolvency dates ; it is sufficient if there is evidence from which the Court can find that the director is insolvent 8. If a director becomes financially insolvent and asks his creditors to accept a composition, he is to be regarded as an insolvent within the meaning of the regulation 9.

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1. Towers v. African Tug Co. [1904] 1 Ch. 558.
2. Glossop v. Glossop [1907] 2 Ch. 370, 374-75.
3. National Bank of Wales [1899] 2 Ch. 629 ; in H. L. *sub nom.* Dovey v. Cory [1901] A. C. 477.
4. Latchford Premier Cinema v. Ennion [1931] 2 Ch. 409 (410).
5. Mack's Claim [1900] W. N. 114.
6. Mc Connell's Claim [1901] 1 Ch. 728.
7. Bodega Co. [1904] 1 Ch. 276.
8. London & Counties Assets Co. v. Brighton &c. Picture Palace [1915] 2 K. B. 493 ; Harold Sissons & Co. v. Sissons [1910] 54 S. J. 802.
9. James v. Rockwood Colliery Co. [1912] W. N. 263, 28 T. L. R. 215, 106 L. T. 128.

Holding any other office of profit.

Cl. *(e)*. Where the articles provided that a director should *ipso facto* vacate his office if he accepted or held any other office under the company except that of the managing director or manager, a resolution appointing two of the directors to act as solicitors of the company did not disqualify them 1. But if a director hold the office of a paid trustee of a debenture deed, that will disqualify him 2. A secretary, if elected as a director, may act as such if he cease to receive the salary of the post of secretary 3.

Participation in profits of a contract.

Cl. *(h)*. In the absence of a provision in the articles a director is precluded from partaking any benefit from a contract which requires the sanction of his board 4, and if he makes any profit he must account to the company 4. It makes no difference that the profit is one which the company itself could have obtained 5.

Meaning of "profits."

As to the meaning of the expression "profits of any contract" see the cases noted below 6. A director's office is vacated if he is concerned in any such contract, although no profits arise therefrom 7. A director is entitled to be heard on the question whether his office has been vacated 8.

When does the disqualification cease.

The disqualification ceases as soon as the transaction is completed, and the director may be re-elected 9.

See notes to s. 83 B.

Rotation of Directors.

78. At the first ordinary meeting of the company, the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year, one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

The articles of a company other than a private company which is not the subsidiary company of a public company shall be deemed to contain this regulation ; see s. 17(2).

Retirement of directors.

Where besides the governing director and the managing director (who were not to retire according to the articles of association of the company) the number of ordinary directors was reduced to two only, neither of the latter was bound to retire from office at the ordinary general meeting 10.

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1. Harper's Ticket Issuing Co. [1912] W. N. 263, 29 T. L. R. 63.
2. Astley v. New Tivoli [1899] 1 Ch. 151.
3. Iron Ship Coating Co. v. Blunt [1868] 3 C. P. 484.
4. Imperial M. C. Assn. v. Coleman [1870] 6 Ch. App. 558, 566, on appeal 6 H. L. 189 ; Gluckstein v. Barnes [1900] A. C. 240.
5. Boston &c. Co. v. Ansell [1888] 39 Ch. D. 339 ; Erskine v. Sacks [1901] 2 K. B. 504, 517. *Contrast* Jubilee Cotton Mills [1923] 1 Ch. 1 ; see also Transvaal Lands Co. v. New Belgium Co. [1914] 2 Ch. 488.
6. Todd v. Robinson [1885] 14 Q. B. D. 739 ; Bodega Co. [1904] 1 Ch. 276 ; Cory v. Harrison [1906] A. C. 274 ; Norton v. Taylor [1906] A. C. 378 ; Holden v. Southwork Corpn. [1921] 1 Ch. 550.
7. Star Steam Laundry v. Dukas [1913] W. N. 39, 108 L. T. 367.
8. Turnbull v. West Riding Club [1894] W. N. 4, 70 L. T. 92.
9. Re Bodega Co. (supra).
10. David Moseley & Sons [1939] 1 Ch. 719.

Effect of failure to hold general meeting. Where by the provisions of the articles directors retire from office at an ordinary general meeting, failure to hold such a meeting will prevent their re-election, their retirement dating from the last day in the year in which a general meeting could have been held 1. The word "directors" does not include *de facto* directors or subscribers to the memorandum of association. It applies only to directors who have been duly appointed under the articles. 2.

Additional directors. Where additional directors are appointed in accordance with provisions similar to those under reg. 85, the whole number of directors of whom a proportion is to retire does not include the additional directors who hold office until the ordinary general meeting 3.

See notes to reg. 82.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

Regulations 78 to 82 shall be deemed to be contained in the articles of all companies other than private companies which are not subsidiaries to public companies; see s. 17(2).

80. A retiring director shall be eligible for re-election.

See notes under reg. 79.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

See notes under reg. 79.

Recommended by board. If the company can, under the articles, only appoint persons recommended by the board, the recommendation must be made by a properly constituted board meeting 4. It is not enough that a majority of the board being present assent to the appointment 4.

Amendment. Where a notice stated that certain resolution would be passed "with such amendments as should be determined upon" including a resolution to appoint three named persons as directors, it was competent for the company to add three other persons by way of amendment 5.

Poll. At an election of directors, if a poll is demanded, a return of the poll must be taken to be good unless the question is raised before a proper tribunal 6.

Illegal agreement. Where under the articles directors are to be appointed at a general meeting, an agreement made by the directors by which directors are to be imposed upon the shareholders by another company is illegal 7.

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1. Consolidated Nickel Mines [1914] 1 Ch. 883.
2. John Morley Building Co. v. Barras [1891] 2 Ch. 386.
3. Eyre v. Milton Proprietary Ltd. [1936] 1 Ch. 244 C. A. 154 L. T. 120.
4. Barber's case [1877] 5 Ch. D. 963.
5. Betts & Co. v. Macnaghten [1910] 1 Ch. 430.
6. Wandsworth Gas Co. v. Wright [1870] 22 L. T. 404.
7. James v. Eve [1873] 6 H. L. 335.

Intention to propose —written notice.

Where the articles provided that a member could not be elected a director unless written notice of the intention in that behalf were given to the company not less than 14 days before the day of election of directors, a notice given 14 days before the adjourned meeting was held to be sufficient [1].

82. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors or such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

See notes under reg. 79.

Where inapplicable.

This regulation does not apply to *de facto* directors [2], nor where no meeting is held at all in breach of the regulations and s. 76 [3].

Where position not filled up.

If for any reason the first or the adjourned meeting does not proceed validly to fill up the places of the vacating directors, they will continue in office [4]. In such a case there is no vacancy to which a successor can be elected [5].

S. 42, Specific Relief Act.

Where the articles provided that the directors should be elected annually at a general meeting, it was held by B. B. Ghose and Garlick JJ. that so long as the general meeting was not held, the directors elected at the previous general meeting would continue in office [6]. It was further held in this case that a declaration could not be made under s. 42 of the Specific Relief Act I of 1877 to the effect that the directors elected in the previous year were no longer directors of the company and that all acts done by them were illegal and void, because the plaintiff did not in such a suit claim to be entitled to any legal character or to any right as to any property which had been denied. It was also held that such a declaration ought not to be made by the Court in the exercise of its discretion [7].

83. *Subject to the provisions of sections 83A and 83B of the Indian Companies Act, 1913* the company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

The words in italics have been inserted by the Companies (Amendment) Act, 1936.

See notes to reg. 68.

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[1] Catesby v. Burnett [1916] 2 Ch. 325.
[2] John Morley Building Co. v. Barras (supra).
[3] See notes to reg. 78.
[4] *Ex. p.* Kennedy [1890] 44 Ch. D. 472, 482.
[5] Holt v. Catteral [1931] 47 T.L.R. 332.
[6] Kailash v. Jogesh [1928] C. 868, 32 C.W.N. 1084.
[7] Kailash v. Jogesh (supra).

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84. Any casual vacancy occurring on the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

The election of a person as a director by the directors entitles him to hold office till the next general meeting, while if he is elected at a general meeting, he is entitled to hold office for three years under reg. 78 1.

As to what are casual vacancies see the case noted below 2.

A casual vacancy means in general any vacancy occurring by death, resignation or bankrupcy and not by effluxion of time 3.

A casual vacancy may be filled up either by the directors or by the general meeting 4.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

Additional directors.

Under this form of articles the directors only have the power of appointing additional directors 5. But if the company in general meeting has a concurrent power 6 under the articles or if owing to deadlock there is no board capable of making the appointment 7, a general meeting can elect additional directots.

Art. 148 of the articles of association of a company was in terms similar to reg. 82 *ante* and art. 151 was a combination of regn. 83 and the present regulation. Under art. 151 the board of directors co-opted six persons as directors who were under that article to hold office only until the next following ordinary general meeting at which they were to retire, bur could be re-elected. At such ordinary general meeting only two out of the retiring directors were re-elected, but nothing was said about the co-opted directors and no election in their place was mooted or effected. It was held, (1) the vacancy created by the retirement of a co-opted director was precisely the same as that created by the retirement of the shareholders' director and therefore Art. 148 applied to the co-opted directors ; (2) the provisions of art. 148 not being mandatory the six co-opted directors must be deemed to have been re-elected within the meaning of art. 148 by virtue of a notional adjourned meeting and a notional re-appointment 8. It is however submitted with great respect that art. 148 (corresponding to reg. 82) seems to apply only to directors elected by the shareholders or appointed by the articles of association and not to directors co-opted by the board of directors as

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1. Gur Prasad v. Rameshwar [1933] A. 344, [1933] A. L. J. 290, 143 I. C. 7.
2. Compagnie de Mayville v. Whitley [1896] 1 Ch. 788.
3. Srinivasan v. Watrap [1932] M. 100.
4. Munster v. Cammel Co. [1882] 21 Ch. D. 183, 188 ; Isle of Wight Ry. Co. v. Tahourdin [1883] 25 Ch. D. 320. But see cases noted under the following regulation.
5. Blair Open Hearth Furnace Co. v. Reigart [1913] 108 L. T. 665.
6. Isaacs v. Chapman [1915] W. N. 413, [1916] W. N. 28.
7. Barron v. Potter [1914] 1 Ch. 895 ; Foster v. Foster [1916] 1 Ch. 532.
8. Sati Nath v. Suresh Chandra [1941] C. 136, [1940] 1 Cal. 560.

the power to do this latter act is given by a subsequent article as a temporary measure.

Where the articles provided, "The governing directors shall have power from time to time and at any time to appoint and remove at will additional directors", on the construction of the articles it was held that this power was to be exercised by all the governing directors and the words "governing directos" were not equivalent to a "majority of the governing directors." The rule of corporation law (laid down in *Grindley* v. *Barker* 6 T. R. 388) that when a duty is delegated to a body of persons those persons can act at a meeting does not apply to the case of articles of associations of companies incorporated under the Companies Act [1].

See notes to s. 83 B and to regulations 68 and 72 *ante*.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Removal of directors.

A company, whose directors are appointed under its articles for a definite period, has no inherent power to remove them before the expiration of the period without first altering the articles; even a special resolution for removal will not be effective [2].

Where the articles provide that a company may remove any director "for negligence, misconduct or any other reasonable cause", it is the general meeting which can judge whether the cause is reasonable or not, and in the absence of a fraud the Court will not interfere with the decision of the general meeting [3].

Exclusion.

A director who has been excluded from board meetings by his co-directors has the right to compel them to admit him [4].

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors.

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[1] Perrot & Perrot, Ltd. v. Stephenson [1934] Ch. 171.

[2] Imperial Hydropathic Hotel Co. v. Hampson [1883] 23 Ch. D. 1; Howden v. Yorkshire Miners' Association [1903] 1 K. B. 308, 338; Boschoek &c. Co. v. Fuke [1906] 1 Ch. 148; Thomas Logan Ltd. v. Davies [1911] 104 L. T. 914, on appeal 105 L. T. 419.

[3] Inderwick v. Snell [1849] 2 Mac. & G. 216; see also Hayman v. Rugby School [1874]18 Eq. 28.

[4] Pulbrook v. Richmond Mining Co. [1878] 9 Ch. D. 610.

Directors cannot act without a meeting.

Lord Justice Fry said 1 : Directors cannot think without meeting. Lord Justice Cozens-Hardy observed : "It was laid down by the Court of Exchequer in *D' Arcy* v. *Tamar* 2 that directors must act together at a board and that it is not sufficient to procure the separate authority of a sufficient number of directors to constitute a quorum" 3. Jessel M. R., said : Where "six directors out of seven met in a different capacity and for a different purpose (at a general meeting of shareholders), such a meeting does not make them a board of directors" 4.

Notice of meeting.

In law a meeting of directors is not duly convened unless due notice is given to all the directors 5. So notice of a board meeting must be given to the directors 6 and a director has no power to waive his right to notice 7. But if a director is abroad, a meeting without notice to him will be valid 8. A meeting without notice to all the directors is invalid 9. Even a majority of the directors cannot act at a meeting of which notice has not been given to the whole body 10. A short notice may suffice, if the directors can attend 11. Even a verbal notice will do, and if the party objecting to the shortness of notice does not intervene at once, it will not prevail 11.

In default of notice to all the directors, the meeting is irregular. No notice may, however, be necessary if the absent directors had knowledge of the meeting otherwise. From the mere fact that there is nothing on the record to show that notice was given, the Court cannot assume that the notice was not given. It is for the party alleging that the meeting was irregular to prove to the satisfaction of the Court that notice was not in fact given to the absent directors. Generally the Court is entitled to assume that everything has been done regularly and in due course, in the absence of evidence to the contrary 12.

Contents of notice.

It is not necessary to state in the notice the business to be transacted at the meeting 13. But if the articles require that a certain business or class of business should be transacted at a meeting of directors specially convened for the purpose, the notice must specify the business 14.

Effect of irregularity.

An irregularity in a meeting of directors for want of notice to all the directors for confirming a transfer of shares does not invalidate a transfer duly made. It is sufficient if at the date of the winding up there is upon the register a transferee who is legally liable to the company in respect of the shares 15.

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1. Portuguese Copper Mines [1889] 42 Ch. D. 160, 167.
2. [1867] 2 Ex. 158.
3. Haycraft Gold Reduction Co. [1900] 2 Ch. 230 at p. 235.
4. Barber's case [1877] 5 Ch. D. 963 at p. 967.
5. Ebrahim v. South India Industrials [1938] M. 962, [1938] 2 M.L.J. 568.
6. Lyster's case [1867] 4 Eq. 233 ; Scottish Petroleum Co. [1883] 23 Ch. D. 413.
7. Portuguese Copper Mines (supra) ; Young v. Ladies' Imperial Club [1920] 2 K. B. 523.
8. Halifax Sugar Co. v. Franklyn [1890] 59 L. J. Ch. 591, 62 L. T. 563.
9. Homer &c. Gold Mines [1889] 39 Ch. D. 546.
10. Bank of Syria [1900] 2 Ch. 272, [1901] 1 Ch. 115.
11. Browne v. La Trinidad [1887] 37 Ch. D. 1.
12. Peninsular Life Assurance Co. [1936] B. 24, 37 Bom. L.R. 904, 160 I.C. 638.
13. La Compagnie de Mayville v. Whitley [1896] 1 Ch. 788.
14. Young v. Ladies' Imperial Club (supra).
15. Peninsular Life Assurance Co. (supra) ; Symon's case [1870] 5 Ch. App. 298.

Meeting—what is. Where there were only two directors, and one did not attend a meeting duly summoned, but the other meeting him shortly after in the passage of his office proposed the election of a third director and, an objection being made, declared that by his casting vote as chairman he carried the resolution, it was held to be valid 1. But where one director met another at a railway station and proposed resolutions to which the other objected, they were held not to be valid 2.

Agenda. At a board meeting the directors can take the items of business in such order as they think proper, and not necessarily in the order on the agenda paper 3.

Ratification. If the previous meeting is informal, a subsequent meeting can ratify the business done at the former meeting 4.

Resolution signed by all directors. It seems that a provision in the articles that a letter signed by all or a majority of the directors shall have the same effect as a resolution of the board, is valid 5.

Exclusion from meeting. A director cannot exclude a co-director from a board meeting 6. The excluded director can get an injunction restraining his exclusion 7.

As to the chairman's casting vote see notes to reg. 90.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

Where articles do not fix quorum. Where the articles do not prescribe a quorum the number who usually act in conducting business of the company will constitute a quorum 8, or a majority of the directors may form a quorum 9. Unless a quorum is present the business transacted is void 10.

What is quorum. The quorum must not be a quorum of persons not competent to vote 10, *e.g.*, directors who are interested in the contract under discussion 10; and the objection will not be removed by dividing the business into two resolutions and each director voting only on the resolution affecting the other, or reducing the quorum to one to make the other alone to form a quorum 11.

Presumption. Where the articles provide, as here, that the quorum may be fixed by the directors, an outsider is entitled to assume that the directors have acted with a proper quorum 12.

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1. Smith v. Paringa Mines [1906] 2 Ch. 193.
2. Barron v. Potter [1914] 1 Ch. 895.
3. Molineaux v. London &c. Insurance Co. [1902] 2 K. B. 589; Cawley & Co. [1889] 42 Ch. D. 209.
4. Portuguese Copper Mines (supra).
5. Haycraft Gold Reduction Co. (supra).
6. Kyshe v. Alturas Gold Ltd. [1888] 4 T. L. R. 331; Bainbridge v. Smith [1889] 41 Ch. D. 462.
7. Pulbrook v. Richmond &c. Co. [1878] 9 Ch. D. 610.
8. Regent's Canal Ironworks [1867] W. N. 79; Lyster's case [1867] 4 Eq. 233.
9. York Tramways Co. v. Willows [1882] 8 Q. B. D. 685.
10. Yull v. Greymouth Point Co. [1904] 1 Ch. 32.
11. North Eastern Insurance Co. [1919] 1 Ch. 198, 207.
12. County of Gloucester Bank v. Rudry Merthyr & Co. [1895] 1 Ch. 629; Bank of Syria [1901] 1 Ch. 115; Cox v. Dublin City Distillery [1915] 1 I. R. 345.

Committee. Under this form of articles the directors may appoint a quorum of one or delegate powers to a committee consisting of one director only 1.

Exclusion. The presence of a quorum does not prevent a lawfully constituted director from attending the board meeting or does not allow a portion of the board to exclude others 2.

If the number in office is less than a quorum. If the number remaining in office is less than a quorum it is doubtful whether they can act 3. It has however been held by the Rangoon High Court that where one of the two directors is debarred from acting, the other director can alone act for the company 4.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

Directors' powers. If the articles provide that the continuing directors may act (*not in the restricted manner as in this regulation*) notwithstanding vacancies, a number less than the minimum allowed by the articles can bind the company 5.

Meaning of "continuing." This regulation does not validate the acts of an original board less in number than the minimum prescribed by the regulations—"continuing" means continuing after there has once been a board competent to transact business 6.

A director may be liable to pay for the shares allotted to him or for any calls made thereon by a resolution to which he was himself a party as a director, although the resolution was not passed by a board properly constituted according to the company's articles of association. In such cases he will be estopped from denying his liability 7.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office ; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

Appointment of chairman. The appointment of a chairman made in contravention of the articles is void, and is not confirmed by mere acquiesence ; consequently where there is no provision for a casting vote of a chairman, a resolution carried by his casting vote is inoperative 8.

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1. Fireproof Doors Ltd. [1916] 2 Ch. 142 ; see reg. 91 & notes thereto.
2. Per Chitty J. in Harben v. Phillips [1883] 23 Ch. D. 14 at p. 26.
3. See Bank of Syria [1900] 2 Ch. 272 ; Newhaven Local Board v. Newhaven School Board [1885] 30 Ch. D. 351.
4. Bowdens Ltd. v. British Plumbing Co. [1925] R. 241, 88 I. C. 331, 4 Bur. L.J. 36.
5. Scottish Petroleum Co. [1883] 23 Ch. D. 413 ; Compagnie de Mayville v. Whitley [1896] 1 Ch. 788.
6. Sly, Spink & Co. [1911] 2 Ch. 430.
7. York Tramways Co. v. Willows [1882] 8 Q. B. D. 685, 46 L. T. 296 ; Faure E. Accumulators Co. v. Phillipart [1888] 58 L. T. 525.
8. Clark v. Workman [1920] 1 I. R. 107.

The mere appointment of a permanent director as chairman will not make him a permanent chairman 1.

Chairman's liability.

Where certain sums were received by the chairman on behalf of the company and in the capacity of its chairman and the sums were actually expended on matters connected with the company, the chairman could not be made personally liable for the sums so received 2.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit ; any committee so "formed" shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

The word within inverted commas was substituted for the word "found" by the Repealing and Amending Act X of 1914.

Delegation of power to a committee.

Unless the articles authorize it the directors cannot delegate their powers to a committee 3. The committee under this regulation may consist of a single director 4. By making such delegation the directors lose their power to act in the matter 5 or to control the company's affairs 6. No single director can bind the company unless powers have been delegated to him by the board under some provisions in the articles 3.

Where a resolution of the board of directors has authorized one of the directors to attend to all affairs and Court proceedings, the director so authorized can file petitions in insolvency as such petitions involve proceedings in Court 7.

Presumption.

Delegated authority will be presumed where one or two directors act in a matter within the scope of the ordinary business of the company 8. By the articles of a company the directors had power to delegate to one or more of their body such of the powers conferred on the directors as they might consider requisite for carrying on of the business of the company, and to determine who should be entitled to sign the contracts and documents on the company's behalf. A document purporting to be a guarantee was given to the plaintiffs executed by the company in this form : "The F. E. B., Ltd., signed N. P." N. P. was a director of the company and during the negotiations for the giving of the guarantee he had written to the plaintiffs signing the letters "for and on behalf of the company, N. P. Chairman." Upon these facts in an action on the guarantee it was held that the plaintiffs were entitled to presume that the directors had authorized N. P. to sign contracts on behalf of the company and that the company was liable on the guarantee 9.

92. A committee may elect a chairman of their meetings : if no such chairman is elected, or if at any meeting the chairman

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1. Foster v. Foster [1916] 1 Ch. 532.
2. Giridhari v. Societe Belge de Banque [1938] L. 341, 178 I. C. 23.
3. Howard's case [1866] 1 Ch. App. 561.
4. Taurine Co. [1884] 25 Ch. D. 118 ; Fireproof Doors Ltd. [1916] 2 Ch. 145.
5. Huth v. Clarke [1891] 63 L. T. 348.
6. Horn v. Henry Faulder & Co. [1908] 99 L. T. 524.
7. Ebrahim Sait v. Mettupalayam Narayani Bank [1940] M. 958, [1940] 2 M. L. J. 495, [1940] M. W. N. 990.
8. Totterdale v. Fareham Brick Co. [1866] 1 C. P. 674.
9. British Thomson-Houston Co. v. Federated European Bank [1932] 2 K. B. 176 C. A.

is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

If a person, who had ceased to be a director by the expiry of the period for which he was elected, enters into an agreement as director on behalf of the company with a third party and the other shareholders agree to ratify and carry out the terms of the agreement, the irregularity is cured by this regulation and the company is estopped from challenging the validity of the agreement on the ground that the director was not duly appointed [1]. See s. 86 and notes thereto.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

The articles of all companies shall be deemed to contain this regulation ; see s. 17(2).

Meaning of dividend.

Dividend means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient [2].

Power to declare dividend.

Where by the articles power is given to the directors to declare a dividend with the sanction of a general meeting and also to set aside out of profits a sum as a reserve fund before declaring a dividend, the shareholders in general meeting cannot declare a dividend [3].

Company is not bound to divide the whole profits.

Unless the memorandum or the articles of association make a clear provision that the whole of the company's profits shall be divided among the shareholders, the company is not bound to do so [4]. Whether the whole or a portion or what portion shall be divided among the shareholders, are questions of internal management of a company and the Court has no jurisdiction to interfere [5]. If the directors in their discretion think that a dividend should not be declared, the Court will not be easily induced to override their decision. The

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1. Joseph v. Kyanktaga Grant Co. [1935] R. 76, 156 I. C. 196.
2. Lamplough v. Kent Waterworks [1903] 1 Ch. 575, 580-81 ; [1904] A. C. 27.
3. Bombay Burma Trading Corpn. v. Dorabji [1886] 10 Bom. 415.
4. Evling v. Israel & Oppenheimer Ltd. [1918] 1 Ch. 101.
5. Burland v. Earle [1902] A. C. 83, 95.

law in this respect was clearly laid down by their Lordships of the Judicial Committee in the following words : "Their Lordships are not aware of any principle which compels a joint stock company while a going concern to divide the whole of its profits amongst its shareholders. Whether the whole or any part should be divided, or what portion should be divided and what portion retained, are entirely questions of internal management which the shareholders must decide for themselves, and the Court has no jurisdiction to control or review their decisions, or to say what is a 'fair' or 'reasonable' sum to retain undivided, or what reserve fund may be properly required. And it makes no difference whether the undivided balance is retained to the credit of profit and loss account, or carried to the credit of a rest or reserve fund, or appropriated to any other use of the company. These are questions for the shareholders to decide subject to any restrictions or directions contained in the articles of association or bye-laws of the company"........."If the company may form a reserve fund or retain a balance of undivided profits, it must, it would seem, have power to invest the moneys so retained" 1. Except in the case of fraud shareholders cannot insist on the payment of dividends even where the profits are amply sufficient, if the directors decline to declare a dividend 2.

Principle of keeping accounts.

Final dividend cannot be declared except at an annual general meeting at which accounts up to the prescribed date and reports thereon are submitted 3. For the principles upon which the accounts of a trading company should be kept for the purpose of showing how dividends ought to be paid, see the judgment of Chitty J. in the case noted below 4.

When payment can be enforced.

Until a dividend is declared no class of shareholders are entitled to bring an action to enforce payment 5. A shareholder who has with full notice or knowledge of the facts received part of the proceeds of an *ultra vires* act committed by the directors—such as payment of a dividend out of capital—and who still retains the money, cannot, either individually or as suing on behalf of the general body of shareholders, maintain an action against those directors, nor can he do so even if after action and before trial he repays the moneys he has wrongfully received 6.

Capitalization of profits.

A company may, if its memorandum or articles of association so provide, capitalize profits by issuing fully paid up shares to the members, thereby transferring the sum capitalized from the profit and loss account or reserve account to the share capital 7.

When this is done the question arises whether the profits thus capitalized and distributed among the shareholders are to be regarded as income or capital. If a testator bequeaths the income of his shares in a limited company to a life tenant and the capital to the residuary legatee, it has been decided by the House of Lords that even where the accumulated profits are distributed by the company as bonus dividend which is applied in part payment of new shares allotted, the so-called bonus dividend is capital and the life-tenant is not entitled to the bonus or the new shares 8. The principle of this

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1. Burland v. Earle [1902] A. C. 83, 95 (P.C.).
2. Bond v. Barrow H. Steel Co. [1902] 1 Ch. 353.
3. Nicholson v. Rhodesia Trading Co. [1897] 1 Ch. 434.
4. Lubbock v. British Bank of South Africa [1892] 2 Ch. 198.
5. Evling v. Israel & Oppenheimer Ltd. (supra) ; Accrington Corpn. Steam Tramways [1909] 2 Ch. 40 ; Bond v. Barrow H. Steel Co. (supra) ; Lindley 6th ed. p. 609.
6. Towers v. African Tug Co. [1904] 1 Ch. 558.
7. Bridgewater Navigation Co. [1891] 2 Ch. 317 at p. 327 (Lindley L. J.).
8. Bouch v. Sproule [1887] 12 App. Cas. 385 ; see also Ringland v. Ward [1936] 52 T. L. R. 605 ; Motilal v. Bai Mani [1922] 46 Bom. 529, 87 I. C. 279.

decision was applied by the House of Lords in cases where the question was whether dividends of a limited company declared out of its current annual profits and distributed in the form of shares of the company was income of the recipient for the purposes of super-tax, *i.e.*, whether it was part of the recipient's "total income from all sources" within s. 66 of the Finance Act (Eng.) 1909-10 or whether it was exempt from super-tax by reason of its having become capital [1]. In *Swan Brewery* Co. v. *Rex* [2], where the company passed the necessary resolution to increase its capital by issuing new shares and transferred accumulated profits to the credit of share capital account, it was held by the Privy Council that the allottees were liable to pay income-tax on these shares. In *Commissioners of Inland Revenue* v. *Blott*, [1], the *Swan Brewery Company's* case was distinguished by the majority on the ground that the Australian Act under which it was decided, the word "dividend" was defined to include "advantage" and that it was held therein that the new shares which had been issued to the shareholders and paid out of accumulated reserve were "advantages" and so taxable [3]. It was also held in *Blott's* case by Viscounts Finlay and Cave that the reasoning on which the judgment in *Swan Brewery Company's* case rested was inconsistent with the decision in *Bouch* v. *Sproule* (last note, last page). But in *Blott's* case Lord Sumner was clearly of opinion that "what was said by the Judicial Committee as to the effect in law and business of a distribution of bonus shares was part of the decision and cannot be distinguished from the present case. That case did not turn on the special definition of dividend in the taxing statute of Western Australia" [4]. He along with Lord Dunedin held that *Bouch* v. *Sproule* did not touch the question of income-tax [5]. In *Blott's* case Lord Haldane said that the company was dominant on the question whether the money in question was to be capital or income for all purposes [6].

Blott's case was followed by the House of Lords in *Commissioners of Inland Revenue* v. *Fisher's Executors* [7] in which the bonus was distributed in the form of debenture stock instead of preference shares as in *Blott's* case and the debenture-stock was redeemable by the company after six years. In *Fisher's Executors'* case Viscount Cave L.C. quoted with approval the following observation of Lord Haldane made in *Blott's* case at pp. 184-85: "My Lords, for the reasons I have given I think that it is, as matter of principle, within the powers of an ordinary joint-stock company with articles such as those before us to determine conclusively against the whole world whether it will withhold profits it has accumulated from distribution to its shareholders as income, and as an alternative not to distribute them at all, but apply them in paying up the capital sums which shareholders electing to take up unissued shares would otherwise have to contribute. If this is done, the money so applied is capital and never becomes profits in the hands of the shareholders at all. What the latter gets is no doubt a valuable thing. But it is a thing in the nature of an extra share certificate in the company. His new shares do not give him an immediate right to a larger amount of the existing assets. These remain where they were. The new shares simply confer a title to a larger proportion of the surplus assets, if and when a general distribution takes place as in a winding-up. In these assets the undistributed profits now allocated to capital will be included, profits which will be used by the company for its business but henceforth

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1. Commissioners of Inland Revenue v. Blott [1921] 2 A. C. 171, per Viscounts Haldane, Finlay & Cave (Lords Dunedin & Sumner dissenting).
2. [1914] A. C. 23, P. C. (the judgment was delivered by Lord Sumner).
3. Commissioners of Inland Revenue v. Blott (supra), at p. 188.
4. Ibid at p. 217.
5. Ibid at pp. 205, 215, 219.
6. Ibid at p. 188.
7. [1926] A. C. 395.

as part of its issued share capital. Such a transaction appears to me one purely of internal management with which, for the reasons explained by Lord Davey is *Burland* v. *Earle* [(1902) A.C. 83, 93], no Court can interfere."

These cases have recently been followed by the Judicial Committee in what looks like an extreme case 1. In this case the reserve fund was capitalized and distributed in the form of a special capital bonus by debentures credited as fully paid up. They were repayable at the option of the company at any time after three months' notice and were in fact all redeemed at various dates prior to the end of 1933. The respondents were assessed to super-tax for the year ending 31st. March, 1932. Their Lordships held that by the transaction in question no income, profit or gain aecrued or arose to or were received by the assessee within the meaning of s. 4, Income Tax Act, 1922 and that as regards the point in issue there was no ground for distinction between the Imperial Act and the Indian Act. Their Lordships observed that the personal motive or purpose of the individual shareholders, even if they held a controlling interest in the company, was irrelevant, if it was made out that the company had in fact capitalized the accumulated profits, and for this their Lordships quoted as authority, the following observations of Lord Sumner himself in *Fisher's Executors case* (supra at p. 411) : "In any case desires and intentions are things of which a company is incapable. These are mental operations of its shareholders and officers. The only intention that the company has is such as is expressed in or necessarily follows from its proceedings. It is hardly a paradox to say that the form of company's resolutions and instruments is their substance."

The effect of this decision of the Privy Council in *Commissioners of Income Tax, Bengal* v. *Mercantile Bank of India*, 1 has however been nullified by amendment introduced by the Income-Tax (Amendment) Act VII of 1939. Under the new section 6A introduced into the Indian Income-Tax Act XI of 1922 "dividend' includes—(a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ; (b) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not……" The new section 6C of the said Act says : " 'Income' includes anything included in 'dividend' as defined in Clause 6A………" Therefore, as pointed out by Dr. Radha Binod Pal in his great work, "The Law of Income Tax in British India," First Edition (1940), these definitions would now obviate the possibility of evasion of taxation that became possible in the case of *Commissioners of Income Tax, Bengal* v. *The Mercantile Bank of India, Ltd. (the Yule Case)* (1936) 63 I. A. 457. For a fuller discussion of the question see the above-mentioned work, pp. 473 to 486.

Where a dividend, profit or bonus of 210,000 *l.* was credited to the appellant from the undistributed profits of the company and he was allotted 210,000 fully paid shares in proportion to his holding in the company, it was held by the Judicial Committee that, that sum should be included in the assessment of his taxable income for the purpose of Special Tax and Unemployment Relief Tax (Assessment) Act, 1933 respectively both of which provided that "any dividend, interest, profit or bonus credited, paid or distributed to him by the company from any profit derived in or from Victoria (Australia) or elsewhere by it" should be deemed to form part of a person's assessable income 2. "Their

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1. Commissioners of Income Tax, Bengal v. Mercantile Bank of India [1936] 155 L. T. 186 P. C., 63 I. A. 457.
2. Nicholas v. Commissioners of Taxes in the State of Victoria [1940] A. C. 744 P. C.

Lordships are therefore of opinion that *Blott's Case* 1 is not only distinguishable from the present case, in view of the difference of the statutory provisions under consideration, but that the reasoning of the speeches is *Blott's case* 1 above referred to is helpful in illustrating the contrast between the two cases" 2.

In a recent case in England where a dividend was declared by an investment company and a cheque handed to a shareholder upon condition that the cheque should be immediately endorsed back to the company by way of loan, it has however been held that this was not a distribution of income by the company within the terms of the Finance Act, 1922, s. 21 as amended by the Finance Act, 1937, s. 14, and that the transaction was really a capitalization of the sum in question and not a distribution liable to be included in the assessment of the shareholder to sur-tax 3.

Distribution of capital bonus—duty. Where in accordance with its memorandum of association and pursuant to a resolution passed at a general meeting, a company distributed to its ordinary shareholders out of its capital reserve and by way of capital bonus a number of fully paid shares and stock units which it held respectively in other companies, each of the transfers to the various holders of the ordinary shares of the company was a transfer operating as a "voluntary disposition *inter vivos*" and liable to advalorem duty 4.

Debt. Declaraiton of a dividend creates a debt from the company and limitation begins to run immediately 5.

To whom payable. A company does not hold its dividends as a trustee for the shareholders 6. Dividends are payable to those persons whose names are on the register of members at the time of the declaration 7.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors *to be* justified by the profits of the company.

Meaning of "member." The word "member" in this regulation includes the personal representative of a deceased shareholder whose name remains on the register of members 8.

Interim dividends. Where the articles provide, as here, for payment of interim dividends, a mere resolution of the board to pay does not create a debt as between the company and the shareholder, and the directors are entitled to rescind the resolution subsequently 9.

For meaning of the word "interim" see the case noted below 10.

97. No dividends shall be paid otherwise than out of profits *of the year or any other undistributed profits.*

By the Companies (Amendment) Act, 1936, the words in italics have been added. See Introduction.

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1. [1921] 2 A.C. 171.
2. Nicholas v. Commissioners of Taxes, supra at p. 758.
3. Commissioners of Inland Revenue v. Marbob, Ltd. [1939] 2 K. B. 872.
4. Associated British Engineering, Ltd. v. Commissioners of Inland Revenue [1941] 1 K.B. 15.
5. Severn & Wye Ry. Co. [1896] 1 Ch. 559; see Drogheda Steam Packet Co. [1903] 1 I. R. 512.
6. Tripura S. Cotton Press [1924] 46 M. L. J. 563.
7. Taylor, Philips & Rickard's case [1897] 1 Ch. 298.
8. James v. Buena Ventura Syndicate [1896] 1 Ch. 456, 467.
9. Lagunas Nitrate Co. v. Schroeder [1901] 85 L. T. 22.
10. *Re* Jowitt [1922] 2 Ch. 442.

The articles of all companies shall be deemed to contain this regulation ; see s. 17(2).

Meaning of the article.

"The law is much more accurately expressed by saying that dividends cannot be paid out of capital than by saying that they can only be paid out of profits. The last expression leads to the inference that the capital must always be kept up and be represented by assets which if sold would produce it and this is more than is required by law 1. Perhaps the shortest way of expressing the distinction which I am endeavouring to explain is to say that fixed capital may be sunk and lost and yet that the excess of current receipts over current payments may be divided 2, but that the floating or circulating capital must be kept up, as otherwise it will enter into and form part of such excess in which case to divide such excess without deducting the capital which forms part of it will be contrary to law" 3. There is no rule of law that profit of one year's trading could not be divided merely because on the profit and loss account there was a debit balance on the trading of former years 4.

"The statutes do not expressly prohibit payment of dividends out of capital, but their provisions are wholly inconsistent with return of capital to shareholders" 3. Dividends must not be paid out of capital 5, *i.e.*, under the guise of paying dividends the company must not return any part of the subscribed capital to the members 6.

Distinction between the two expressions.

"The two propositions (1) that dividends must not be paid out of capital, and (2) that dividends may only be paid out of profits are not identical but diverse. The first is the requirement of the statutes and cannot be dispensed with ; the latter is in Table A or the articles of the particular company and is one of the regulations of the company which has to be construed. A company which has a balance to the credit of its profit and loss accounts is not bound at once to apply that sum in making good an estimated deficiency in value of its capital assets. It may carry it to a suspense account or to reserve, and if the assets subsequently increase in value the amount neither has been, nor will be, part of the capital. If therefore a part of that balance is used in paying a dividend that dividend is not paid out of capital, because the same has never become capital, although it still remains a question whether it has been paid out of profits or not. It has been pointed out by Lindley L. J. in *Lee v. Neuchatel Asphalte Co.* 7 that there is nothing in the statute requiring a company to keep up the value of its capital assets to the level of its nominal capital. The requirement is merely negative that dividend shall not be paid out of capital, and the balance to the credit of profit and loss account does not automatically become part of the capital assets, because the value of the actual capital assets has depreciated to an amount equal to or exceeding that balance" 8. "The real question for determination therefore is whether there are profits available for distribution, and this is to be answered according to the circumstances of each particular case, the nature of the company and the evidence of competent witnesses. There is no single definition

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1. See National Bank of Wales [1899] 2 Ch. 629 ; Ammonia Soda Co. v. Chamberlain [1918] 1 Ch. 266 ; Lawrence v. West Somerest Ry. Co. [1918] 2 Ch. 250 ; Lee v. Neuchatel Co. [1889] 41 Ch. D. 1 ; Wilmer v. Macnamara [1895] 2 Ch. 245 ; Kingston Cotton Mills [1896] 1 Ch. 331, 348.
2. Re Jowitt [1922] 2 Ch. 442.
3. Verner v. General Investment Trust [1894] 2 Ch. 239, at p. 266 per Lindley L. J.
4. Crichton's Oil Co. [1901] 2 Ch. 184, [1902] 2 Ch. 86.
5. Mc Dougall v. Jersey Imperial Hotel Co. [1865] 2 H. & M. 528 ; National Funds Assurance Co. [1878] 10 Ch. D. 118, 127 ; Holmes v. Newcastle Abattoir Co. [1875] 1 Ch. D. 682 ; Stroud v. Royal Aquarium Society [1903] 89 L. T. 243 ; re Sharp [1892] 1 Ch. 154.
6. Ammonia Soda Co. v. Chamberlain (supra).
7. [1889] 41 Ch. D. 1, 22.
8. Per Farwell J. in Bond v. Barrow H. Steel Co. [1902] 1 Ch. 353 at p. 365.

of the word 'profits' which will fit all cases. Take for instance Professor Marshall's definition 1. 'When a man is engaged in business his "profits" for the year are the excess of his receipts from his business during the year over his outlay for his business; the difference between the value of his stock and plant at the end and at the beginning of the year being taken as part of his receipts or as part of his outlay according as there has been an increase or decrease in value.' I am precluded from adopting this in its entirety by authorities which are binding on me, because in the definition 'stock and plant' obviously include both fixed and circulating capital as defined at p. 134 of the same treatise, as for instance the judgment of Lindley L. J. in *Verner* v. *General & Commercial Investment Trust* 2, where he says 'Perhaps the shortest way of expressing the distinction which I am endeavouring to explain is to say that fixed capital may be sunk and lost, and yet the excess of current receipts over current payments may be divided, but that floating or circulating capital must be kept up.' I do not understand his lordship to be laying down a general and universal rule that in every company fixed capital may be sunk and lost, but that there are companies in which that may be the case. All the authorities however agree, I think, that circulating capital must be kept up" 3.

Meaning of "profits."

Lord Justice Fletcher-Moulton explained the meaning of the word "profits" in a later case 4. " 'Profits' implies a comparison between the state of business at two specific dates usually separated by an interval of a year. The fundamental meaning is the amount of gain made by the business during the year. This can only be ascertained by a comparison of the assets of the business at the two dates" 5.

"If the total assets of the business at the two dates be compared, the increase which they show at the later date as compared with the earlier date (due allowance of course being made for any capital introduced into or taken out of the business in the meanwhile) represents in strictness the profits of the business during the period in question" 6.

In the same case Lord Justice Farwell observed : "Money which has in fact resulted from the profits made in trading is none the less profit because it is carried over to a suspense account or reserve fund : if it is lost in the trading of subsequent years, there is an end of it ; but so long as it remains in *status quo*, it remains as undistributed profits ; see Lindley L. J. in *Bridgewater Navigation* Co. [1891] 2 Ch. 317" 7.

Profit does not necessarily mean any amount actually netted. It only means that, that is the amount by which the credit side exceeds the debit side in the accounts as appearing in the company's books. Till an account is finally settled this sort of profit may be merely on paper. Until a business is actually wound up any statement as to profit is partly fact and partly an estimate. In most cases it is impossible to attain exactitude in ascertaining the profits of a business because such profits are naturally dependent upon the valuation of the assets of the concern. The proper ascertainment of profits in the case of a company is of great importance only in order to avoid the possibility of payment of dividend wholly or partly out of capital which is strictly forbidden. If that is guarded against and there is no idea of declaring a dividend,

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1. Principles of Economics Vol. 1, p. 142.
2. [1894[2 Ch. 239, 266.
3. Bond v. Barrow H. Steel Co. (supra) at pp. 365, 366.
4. Spanish Prospecting Co. [1911] 1 Ch. 92 C. A.
5. *Ibid* p. 98.
6. Per Fletcher-Moulton L. J. in the previous case at p. 99.
7. *Ibid* at p. 106.

showing of profit on paper may not be so vitally mistaking the position of the company after all 1.

What are net profits.

"Net profits" of the business for a year is the excess of the receipts for the year over the current expenses and outgoings of the same year, *i. e.*, the fund which for that year is capable of being lawfully applied by the company to the payment of dividend. As a matter of law that fund could only be arrived at after deducting the excess profits duty which is a debt of the company to the Crown 2.

"So long as such a company", observe their Lordships of the Judicial Committee, "is a going concern and is not restricted as to the profits out of which it may pay dividends, it may distribute as dividend to its shareholders the excess of its revenue receipts over expenses properly chargeable to revenue account. The balance to the credit of profit and loss account may in many cases be divided as dividend even if the company's capital account is in debit and such a distribution by way of dividend would *prima facie* be 'income or profits' of the trust share and belong to the tenant for life" 3.

Ambiguous.

"Dividends presuppose profits of some sort and this is unquestionably true. But the word 'proff' is by no means free from ambiguity" 4. The question of what is profit available for dividends depends upon the result of the whole account fairly taken for the year, capital as well as profit and loss, and though dividends may be paid out of earned profits in proper cases notwithstanding a depreciation of capital, a realized accretion to the estimated value of one item of capital assets cannot be deemed to be profit divisible amongst the shareholders without reference to the whole accounts fairly taken 5. But where sufficient assets would be left to answer the paid up capital, a realized profit on capital asset can be divided unless forbidden by the articles 6.

"It is clear I think that an appreciation in total value of the capital assets, if duly realized by sale or getting in of some portion of such assets, may in a proper case be treated as available for purposes of dividend" 7.

House of Lords reserved their opinion.

Although the question of the payment of dividend out of capital was discussed by the Court of Appeal in the case of the *National Bank of Wales* 8, the House of Lords reserved their opinion on this important question 9. Lord Halsbury said: "What are profits and what is capital may be a difficult and sometimes an almost impossible problem to solve" 10.

In the same case 11 Lord Macnaghten gave the following warning: "I do not think it desirable for any tribunal to do that which Parliament has abstained from doing--that is, to formulate precise rules for the guidance or embarrassment of business men in the conduct of business affairs" 12.

Previous decision.

But the observations of their Lordships in *Dovey* v. *Cory* cannot be considered as having overruled or qualified 13 the previous decisions of the Court of Appeal in the cases noted below 14.

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1. Karachi Bank v. Shewaram [1933] S. 12. 33 Cr. L. J. 891, 140 I. C. 31.
2. Patent Castings Syndicate v. Etherington [1919] 2 Ch. 254.
3. Hill v. Permanent Trustee Co. [1930] P. C. 302 (305), [1930] A.L.J. 1347.
4. Per Lindley L.J. in Verner v. General Investment Trust, infra at p. 266.
5. Foster v. New Trinidad &c. Co. [1901] 1 Ch. 208.
6. Cross v. Imperial C. G. Assn. [1923] 2 Ch. 553.
7. Foster v. New Trinidad &c. Co. (supra) per Byrne J. at p. 212.
8. [1899] 2 Ch. 629. 9. Dovey v. Cory [1901] A. C. 477.
10. *Ibid* p. 487. 11. Dovey v. Cory (supra).
12. *Ibid* p. 488. 13. Ammonia Soda Co. v. Chamberlain [1918] 1 Ch. 266. C. A.
14. Lee v. Neuchatel Asphalte Co. (infra); Verner v. General Trust Co. (infra) and National Bank of Wales [1899] 2 Ch. 629.

Dividend may be paid out of current profits.

An ordinary trading company may lawfully pay a dividend out of current profits without setting aside a sum sufficient to cover depreciation in the value of the fixed capital 1. "It is not possible for the Court to say that the law prohibits a limited company, even a limited banking company, from paying dividends unless its paid up capital is intact" 2.

Lord Justice Kay held: "Any income received may be divided, whether part of the capital is lost or not. At present I do not know of any law to prevent this, and it might be difficult to provide such a law without unduly interfering with the liberty of commercial proceedings" 3.

The Companies Act does not, nor does the general law, prohibit a company from distributing the clear net profits of its trading in any year unless its paid up capital is intact or until it has first made good all trading losses incurred in previous years 4.

Again Lord Justice Lindley observed: "There is no law which compels limited companies in all cases to recoup losses shown by the capital account out of the receipts shown in the profit and loss account, although care must be taken not to treat capital as if it were profit" 5. Directors are not bound to set aside a portion of the profits as a sinking fund 6, but it is safe for them to make some provision for making good the loss of fixed capital before paying away profits as dividend 7.

If there is a reserve fund also an interest adjustment account or suspense account sufficient to cover the bad and doubtful debts, a company would be justified in declaring a dividend out of profit; and under such circumstances the company would be justified in carrying to profit and loss account interest on bad and doubtful debts not actually realised 8.

Meaning of "capital."

"Moreover when it is said and said truly that dividends are not to be paid out of capital, the word 'capital' means the money subscribed pursuant to the memorandum of association or what is represented by the money. Accretions to that capital may be realized and turned into money, which may be divided amongst the shareholders, as was decided in *Lubbock* v. *British Bank of South America* [1892] 2 Ch. 199" 9. As to the distinction between the fixed capital and circulating capital see notes to s. 6, sub-s. (I) (v).

Income v. corpus.

Moneys paid in respect of shares in a limited company may be income or corpus of a settled share according to the procedure adopted, *i. e.*, according as the moneys are paid by way of dividend before liquidation or are paid by way of surplus assets in a winding up. Each process might appear to involve some injustice, the former to the remainder man the latter to the tenant for life 10.

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1. Kingston Cotton Mills [1896] 1 Ch. 331.
2. Per Lindley L. J. in National Bank of Wales (supra).
3. Verner v. General Investment Trust [1894] 2 Ch. 239 at p. 270.
4. Ammonia Soda Co. v. Chamberlain (supra).
5. Verner v. General Investment Trust (supra) at p. 267.
6. Verner v. General Investment Trust (supra); Lee v. Neuchatel Asphalte Co. [1889] 41 Ch. D. 1.
7. Bond v. Barrow H. Steel Co. [1902] 1 Ch. 353.
8. Karachi Bank v. Shewaram [1933] S. 12, 33 Cr. L. J. 891, 140 I. C. 31 following Clifford v. Emp. [1914] 15 Cr. L. J. 80 F. B., 22 I. C. 432 F. B.
9. Verner v. General I. Trust (supra) at p. 265.
10. Hill v. Permanent Trustee Co. [1930] P. C. 302 (305), [1930] A. L. J. 1347.

Each case depends upon its circumstances.

The question whether a company has profits available for distribution must be answered according to the circumstances of each particular case, the nature of the company and the evidence of competent witnesses 1. Although in some cases fixed capital may be sunk and lost without precluding a payment of dividend, circulating capital must be kept up 1.

Profit may be carried to suspense account or reserve fund.

"A company which has a balance to the credit of its profit and loss account is not bound at once to apply that sum in making good an estimated deficiency in value of its capital assets. It may carry it to suspense account or to reserve, and if the assets subsequently increase in value, the amount neither has been nor will be part of the capital. If, therefore, a part of that balance is used in paying a dividend, that dividend is not paid out of capital, because the sum has never become capital although it still remains a question whether it has been paid out of profits or not" 2.

In the undernoted case where the directors of a company owing and operating steam trawlers sold some of their vessels for sums largely exceeding the values at which they stood in the balance sheet, carried the proceeds to suspense account and distributed them as cash bonuses to the shareholders, it was held that not having been capitalized by the issue of bonus shares increasing the total capital, the payments were income 3.

Keeping assets up to nominal capital is not necessary.

This subject was first elaborately discussed by eminent Judges in *Lee v. Neuchatel Asphalte Co.* 4, where it was held that a company was under no obligation to keep the value of its assets up to the nominal amount of its capital, and the payment of a dividend was not to be considered a return of capital merely on the ground that no provision had been made for keeping the assets up to the nominal amount of capital.

Case of "wasting property."

There is nothing in the Companies Act to prohibit a company formed to work a wasting property as, *e.g.*, mine or a patent, from distributing as dividend the excess of the proceeds of working above the expenses of working, nor to impose on the company any obligation to set apart a sinking fund to meet the depreciation in the value of the wasting property. If the expenses of working exceed the receipts, the accounts must not be made out so as to show an apparent profit and so enable the company to pay a dividend out of capital, but the division of the profits without providing a sinking fund is not such a payment of dividends out of capital as is forbidden by law 5.

"If a company is formed to acquire and work a property of a wasting nature, for example a mine, a quarry or a patent, the capital expended in acquiring the property may be regarded as sunk and gone, and if the company retains assets sufficient to pay its debts, it appears to me that there is nothing whatever in the Act to prevent any excess of money, obtained by working the property over the cost of working it, from being divided amongst the shareholders and this in my opinion is true although some portion of the property itself is sold, and in some sense the capital is thereby diminished" 6.

"There is nothing in the Act which says that dividends are only to be paid out of profits. There is a provision to that effect in Table A, and that rather favours the

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1. Verner v. General Investment Trust, supra.
2. Per Farwell J. in Bond v. Barrow H. Steel Co. (supra) at p. 365.
3. Mountain v. Bates [1928] Ch. 682.
4. [1889] 41 Ch. D, 1.
5. Ibid.
6. Per Lindley L. J. in Lee v. Neuchatel Asphalte Co. [1889] 41 Ch. D. I, at p. 24.

view that the matter of how profits are to be divided and dealt with, and out of what fund dividends are to be declared, is a matter of internal regulation" 1.

Payment of dividend, not object.

"But still there is this firmly fixed that capital assets of the company are not to be applied for any purpose not within the objects of the company and paying dividend is not the object of the company, the carrying on the business of the company is its object" 2.

When capital is lost.

"Having stated shortly what are the provisions of the Act of Parliament relating to this matter, I may safely say that the Companies Acts do not require the capital to be made up if lost. They contain no provision of the kind. There is not even any provision that if the capital is lost the company shall be wound up, and I think this omission is quite reasonable. The capital may be lost, yet the company may be a very thriving concern" 3.

Company is not debtor to capital.

"The notion that a company is debtor to capital, although it is a convenient notion it does not deceive men, is apt to lead one astray. The company is not a debtor to capital, the capital is not a debt of the company" 4. "The amount credited," observe their Lordships of the Judicial Committee, "upon a share may, as between one shareholder and another, while the company is a going concern, determine the proportion of profits receivable by him as dividend, and in a winding up, his proportion of surplus assets, but it has no influence to extend or increase the aggregate amount available for division in due course of administration amongst the whole body of shareholders nor does it make the company a debtor for any sum at all" 5.

Expenditure, chargeable to revenue or capital.

"It is not open to doubt that under ordinary circumstances where a trader in order to effect a saving in his working expenses dispenses with the services of a particular agent or servant, and makes payment for the cancellation of the agency or service agreement, such a payment is properly chargeable to revenue ; it does not involve any addition to or withdrawal from fixed capital ; it is purely a working expense" 6.

"The broad principle applicable to a case like the present is stated by Viscount Cave L. C. in *British Insulated &c. Cables* v. *Atherton* 7. But when an expenditure is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital" 8.

"It should be remembered, in connection with this passage, that the expenditure is to be attributed to capital if it be made 'with a view' to bringing an asset or advantage which is to be for the 'enduring' benefit of the trade. I agree with Rowlatt J. that by 'enduring' is meant 'enduring in the way that fixed capital endures'. An expenditure on acquiring floating capital is not made with a view to acquiring an asset that may be

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1. Per Cotton L. J. *ibid* at p. 17. But now by the amendment of 1936 this regulation has been made a part of the Act , see s. 17 (2) *ante*.
2. *Ibid* at p. 17 ; see the observations of Chitty J. in Guinness v. Land Corpn. of Ireland [1883] 22 Ch. D. 349.
3. Lee v. Neuchatel Asphalte Co. (supra) at p. 22 per Lindley L. J.
4. *Ibid* p. 23 ; Verner v. General I. Trust [1894] 2 Ch. 239 ; Trustees' Corpn. v. Commissioners of Income Tax [1930] P. C. 151, 54 Bom. 437, 34 C.W.N. 709, 57 I.A. 154, 51 C.L.J. 489, 32 Bom. L.R. 820, 123 I.C. 177.
5. Trustees' Corpn. v. Commissioners of Income Tax [1930] P.C. 151 at. pp. 157-58.
6. Anglo Persian Oil Co. v. Dale [1932] 1 K.B. 124, per Lawrence L. J. at pp. 139-40.
7. [1926] A.C. 205, 213.
8. Anglo-Persian Oil Co. v. Dale (supra) at p. 142.

turned over in the course of trade at a comparatively early date. Nor, of course, need the advantage be of a positive character. The advantage may consist in the getting rid of an item of fixed capital that is of an onerous character, as was pointed out by this Court in *Mallet v. Stavely Coal & Iron Co.* 1" 2.

What is within shareholders' discretion.

"The Act does not say what expenses are to be charged to capital and what to revenue. Such matters are left to the shareholders. They may or may not have a sinking fund or a deterioration fund, and the articles of association may or may not contain regulations on those matters. If they do, the regulations must be observed; if they do not, the shareholders can do as they like, so long as they do not misapply their capital and cheat creditors" 3.

Warning of Lord Justice Lindley.

The following warning of Lord Justice Lindley should always be borne in mind: "You must not have fictitious accounts. If your earnings are less than your current expenses, you must not cook your accounts, so as to make it appear that you are earning a profit and you must not lay your hands on your capital to pay dividend. But it is I think a misappehension to say that dividing the surplus after payment of expenses of the produce of your wasting property is a return of capital in any sense as is forbidden by the Act" 4.

Depreciation.

Depreciation of capital assets such as building and fixed plant must be taken into account before arriving at the profits of the year; so if the articles declare that dividend shall only be payable out of profits, no dividend can be declared until such depreciation has been allowed 5.

Of course "a company may be formed upon the principle that no dividends shall be declared unless the capital is kept undiminished or a company may contract with its creditors to keep its capital or assets up to a given value 6.

Single item of gain.

Apart from a special provision in the articles, a single item of gain by redemption of debenture stock cannot be dissociated from the loss of capital assets, and the amount of the discount is not distributable as dividend 7. If an amount does not arise out of the company's business, it is not distributable in dividend 7. Where the issue of loan capital was not one of the objects or part of the business of the company, but was a power to be exercised incidentally to or in furtherance of, its objects, the discount was not divisible as net profit as it did not arise out of the company's business 8.

Dictim of Cotton, L.J.

"If the Court sees that the directors of the company have acted fairly and reasonably in ascertaining whether this is a division of profit and not of capital, and then in what is really a matter of internal arrangement (if it is done honestly and does not violate any of the provisions of the articles) the Court is very unwilling to interfere, and in my opinion ought not to interfere, with the discretion exercised by the directors, who have the management of the company, or with the powers exercised by the company within the articles" 9.

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1. [1928] 2 K. B. 405.
2. Anglo-Persian Oil Co. v. Dale (supra) per Romer L.J. at p. 146.
3. Lee v. Neuchatel Asphalte Co. [1889] 41 Ch. D. 1 at p. 25.
4. *Ibid.*
5. Dent v. London Tramways Co. [1880] 16 Ch. D. 344.
6. Verner v. General Investment Trust [1894] 2 Ch. 239 at p. 265 per Lindley L. J.
7. Wall v. London & Provincial Trust [1920] 2 Ch. 582.
8. Wall v. London & Provincial Trust [1920] 1 Ch. 45.
9. Per Cotton L. J. in Lee v. Neuchatel Asphalte Co. (supra) at p. 18.

Recoupment.

Where a company has paid for things, properly chargeable to capital, out of revenue, it can recoup the revenue account at a subsequent time out of capital and may, if necessary, raise fresh capital for the purpose under their borrowing powers[1]. Payment of dividend out of the so-called debenture capital is not illegal[2] as it is no capital at all but money raised by borrowing[3]; and for this purpose it is permissible to revalue the assets[4]. Where depreciation in investments has been debited to revenue account, the investment rising in value, the appreciation may be credited to revenue[5]. But earnings after the commencement of winding up are capital and not income[5]. A company which applies its profits in writing off a corresponding amount of the value of the goodwill instead of carrying them to a goodwill depreciation reserve fund, but which has not finally and unreservedly capitalized these profits, may write back to profit account so much of the depreciation written off goodwill as proves to be in excess of the proper requirement[6].

Sale of capital assets.

If there has been a sale of capital assets with the result that the assets including the purchase money exceed the aggregate amount of the paid up capital and the company's liability to outside creditors, the company can treat the excess as profit and distribute it in dividend although it has been called "capital reserve fund"[7].

Dividend may be paid out of estimated as opposed to realized profits.

Dividends may be paid out of estimated profits, although not actually realized[8], unless the articles provided that dividends should only be paid out of realized profits[9]. "Realized profits" must be taken in its ordinary commercial sense as meaning at least "profits tangible for the purpose of division"[9]. Directors who treat estimated profits as realized and in fact pay dividend out of capital on the chance that sufficient profits might be made, will however be jointly and severally liable, as upon breach of trust[9]. But where debts owing to a company were under-estimated for motives of prudence, the difference between the estimated and ascertained value, when known, represents undrawn profits[10].

Payment out of premium.

Premiums obtained on the issue of shares are profits[11]. There is no principle of law which prevents a company from paying dividends out of assets representing premiums on the issue of shares.[12]

Directors' liability.

In order to charge directors for dividends paid out of capital it is not necessary to establish fraud[13]. But if there is no fraud and the directors acted in the honest belief that there were profits, when in fact there were none, they will not be liable even if the payment of dividend is *ultra vires*[14]. If dividend is declared without proper investigation of the financial position of the company and no profit and loss account is prepared, but only an account of receipts and payments, making no allowance for risks, the directors will be liable if they fail to show that the dividend was properly declared [1].

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[1] Mills v. Northern Ry. [1870] 5 Ch. App. 621, 631; see also Jamaica Ry. Co. v. A. G. of Jamaica [1893] A. C. 127, 136.

[2] Bloxam v. Metropolitan Ry. [1868] 3 Ch. App. 337.

[3] Bloxam v. Metropolitan Ry. [1868] 3 Ch. App. 337, 350.

[4] See Ammonia Soda Co. v. Chamberlain [1918] 1 Ch. 266.

[5] Bishop v. Smyrna & Cassaba Ry. Co. [1895] 2 Ch. 596.

[6] Stapley v. Read Brothers Ltd. [1924] 2 Ch. 1.

[7] Lubbock v. British Bank of South America [1892] 2 Ch. 198; in this case the principles of keeping accounts were discussed.

[8] City of Glasgow Bank v. Mackinnon [1882] 9 Rettie, Court of Sess. 535.

[9] Oxford Building Society [1887] 35 Ch. D. 502.

[10] Bridgewater Navigation Co. [1891] 2 Ch. 317.

[11] See Hoare & Co. [1904] 2 Ch. 208.

[12] Drown v. Gaumont British Picture Corpn. [1937] 1 Ch. 402.

[13] Oxford Building Society (supra) at p. 509; Leeds Estate Co. v. Shepherd [1887] 36 Ch. D. 787.

[14] Kingston Cotton Mills [1896] 1 Ch. 331, 346.

It is settled by authorities that (1) directors are *quasi* trustees of the company's, capital; (2) that directors who improperly pay dividends out of capital are liable to repay such dividends personally upon the company being wound up; (3) that the acquiescence of the shareholders does not affect the creditors in such a case; and (4) that such an act is a breach of trust and the remedy is not barred by the Statute of Limitation [2]. But in this connection the observations of Lindley, M. R. should be borne in mind: "It was stated in the judgment of this Court in *Lagunas Nitrate Co.* v. *Langunas Syndicate* [3], that if directors act within their powers—if they act with such care as is reasonably to be expected from them having regard to their knowledge and experience—and if they act honestly for the benefit of the company they represent, they discharge their equitable as well as their legal duty to the company. We believe this statement of the law to be correct and we adopt it as our guide" [4].

Although improper payment of dividend will be restrained by injunction on an action brought by a shareholder, a simple creditor cannot bring such an action on the ground that the fund for payment of his debt is thereby diminished [5], nor can a debenture-stock holder, unless he can show that he has a presently enforceable security [6], maintain such an action even though the assets of the company are insufficient to provide for payment of the so-called loan capital [6].

Directors who are knowingly parties to the payment of dividend out of capital are liable to proceedings by action, or in the case of winding up, by misfeasance summons under s. 235 [7]. Where the directors fall short of the standard of care which they ought to apply to the affairs of the company, the onus is upon them to show that the dividends have been paid out of profits [8].

Who can sue & obtain injunction.

An individual member can maintain an action in his own name without bringing it on behalf of other persons and himself to restrain the corporation from doing an *ultra vires* act [9]. But if a dividend has been paid out of capital no individual shareholder, who has received his dividend with knowledge of all the facts and still retains it, can maintain an action against the directors to compel them to pay to the company the amount wrongly distributed as dividend [10].

Preference shareholders may obtain an injunction to restrain a proposed payment of an interim dividend in excess of that authorized by the articles [11], or of any ordinary dividend in prejudice of their rights [12].

Language of previous Acts.

The language of Table A of the English Act of 1862 as also of the Indian Act of 1882 was "out of the profits arising from the business of the company." The language of the present article is much wider.

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[1] Rance's case [1870] 6 Ch. App. 104.
[2] Oxford Building Society (supra).
[3] [1899] 2 Ch. 392.
[4] National Bank of Wales [1899] 2 Ch. 629 at p. 671.
[5] Mills v. Northern Ry. [1870] 5 Ch. App. 621.
[6] Lawrence v. West Somerset Ry. Co. [1918] 2 Ch. 250.
[7] Prefontein v. Grenier [1907] A. C. 101 P. C.
[8] Leeds Estates &c. Co. v. Shepherd [1887] 36 Ch. D. 787.
[9] Hoole v. Great Western Ry. Co. [1867] 3 Ch. App. 262.
[10] Towers v. African Tug Co. [1904] 1 Ch. 558.
[11] Durlacher v. Hotchkiss Ordnance Co. [1887] 3 T. L. R. 807.
[12] Foster v. Coles [1906] 22 T. L. R. 555.

98. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

How dividends are to be distributed.

In the absence of such an article members are entitled to dividend in proportion to their shares and not in proportion to the amount paid thereon [1], for the interests of shareholders in respect of their shares as regards dividends and everything else are equal [2]. But in the same company if there are shares of £50 and £1 respectively, each £50 share will be treated for this purpose as fifty £1 shares [3]. Surplus assets remaining after payment of all debts and return of all paid up capital will be divided on the same principle [4].

Table A of the Act of 1882.

Table A of the Act of 1882 following that of the English Act of 1862 provided: "The directors may, with the sanction of the company in general meeting, declare dividend to be paid to the members in proportion to the shares."

Income-tax.

If a class of shares is entitled to a dividend, it is subject to deduction of income tax. In the absence of express words, the preference shareholders are not entitled to have their preference dividends free of income tax [5]. But see *Bai Lalita v. Tata Iron & Steel Co.* [6] where Beaumont, C. J. after refering to ss. 18 and 19 of the Income-Tax Act XI of 1922 observes: "It is therefore in my opinion clear that in the case of a company the tax has to be paid by the company direct and not on behalf of the shareholders, and this is rendered clear by the provisions as to return of income and assessment of companies contained in ss. 22 and 23 of the (Income-Tax) Act." Where no income-tax was payable by the company because of deductions made on account of arrears of depreciation allowed under s. 10(2) (vi) of the Income-tax Act, 1922, and there was no burden to adjust, the company was not justified in making any deduction in respect of income-tax from the dividends paid [6]. Where under the contract between the company and the preference shareholders, as embodied in the articles of association, the company had to pay a full dividend of 7½ p. c. in every year when profits permitted, in any year in which the company was liable to income-tax, it could deduct tax at the standard rate leaving the shareholders to claim a refund from Government in a proper case under s. 48 of the Income-tax Act, 1922 and where no tax was payable by the company, there was no right to deduct [6]. "Section 20 (Income-tax Act, 1922) provides", observes Beaumont C. J. in the last cited case, "that the principal officer of a company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and on such certificate a

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1. Oakbank Oil Co. v. Crum [1882] 8 App. Cas. 65.
2. British Co. v. Couper [1894] A. C. 399; Guinness v. Land Corpn. of Ireland [1883] 22 Ch. D. 349.
3. Wakefield Rolling Stock Co. [1892] 3 Ch. 165, 172.
4. Birch v. Cropper [1889] 14 App. Cas. 525.
5. Purushottam v. Central Indian Spinning Co. [1917] 19 Bom. L. R. 665; A. G. v. Ashton Gas Co. [1904] 2 Ch. 621; [1906] A. C. 10.
6. [1940] 42 Bom. L. R. 57, at p. 72 (F. B.), [1940] B. 97, [1940] Bom. 165 F. B.

shareholder may recover a refund of income-tax under section 48 where the company has been charged at a rate greater than that applicable to his total income for the year. The provisions of section 20 are no doubt mandatory, but in my opinion, they only apply where the company is liable to tax, and I cannot think that the officers of the company in this case were justified, as against their preference shareholders, in giving year after year a certificate that income-tax had been or would be paid on the profits being distributed when in fact no income-tax was being charged on such profits. The penalty imposed by section 51 on a failure to furnish a certificate under section 20 only arises where the failure is without reasonable cause or excuse and the fact that the certificate would be untrue would seem to provide reasonable cause for not issuing it."

Where an assessee's income in assessment included dividends declared by a company registered in India whose profits were found to include specified sums to which in accordance with s. 4, sub-s. (1) of the Income-tax Act, 1922 the said Act did not apply being profits or gains which had neither accrued, nor been received in India, and the company had been assessed in respect of profits to which the Act did apply, it was *held* that the whole of the dividends so received by the assessee were exempted from taxation to ordinary income-tax in accordance with s. 14, sub-s. 2(a) of the Income-tax Act 1. The underlying principle of cl. (a) of sub-s. (2) of s. 14 is that the dividend represents merely the shareholders' share in income of the company 1.

Rights of preference share-holders.

If it is provided in the memorandum or the articles of association that the rights of the holders of preference shares should come first, they cannot be postponed 2; but if the preference shares are issued subject to the rights of the company to issue fresh capital having such preference and priorities as shall be agreed upon, the original preference shares may be postponed 3.

A declaration that the profits are to be applied first in paying a dividend on the preference shares and secondly on the ordinary shares, gives the preference shareholders cumulative dividend 4, unless it is provided that the profits of each year are to be distributed among the preference shareholders on the basis mentioned 5.

Where preference shareholders are given a fixed preferential dividend at a specified rate, their right to any further dividend is impliedly negatived 6.

For other cases see notes to s. 192.

Where a clause in the memorandum of association provided that the preference shares should entitle the holder to a fixed cumulative dividend at 7 p. c. on the amount for the time being paid up and to the repayment of capital before any dividend was paid to the holders of ordinary shares and to a further dividend calculated as therein mentioned, it was held that the company could pay dividend on ordinary share capital subject only to the fixed cumulative dividend of 7 p. c. on the preference shares and that the latter were entitled in the event of a winding up to rank *pari passu* with the holders of ordinary shares in any surplus assets of the company 7.

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1. Commissioners of Income-tax, Bengal v. Hungerford Investment Trust [1936] P. C. 219, 63 I. A. 359, [1937] 1 Cal. 237 P. C.
2. James v. Buena Ventura Syndicate [1896] 1 Ch. 456; Welton v. Saffery [1897] A. C. 299. 3. Underwood v. London Music Hall [1901] 2 Ch. 309.
4. Foster v. Coles [1906] 22 T. L. R. 555.
5. Adair v. Old Bushmills Distillery [1908] W. N. 24; see also Staples v. Eastman Co. [1896] 2 Ch. 303.
6. Will v. United Lankat Plantations Co. [1912] 2 Ch. 571; [1914] A. C. 11.
7. Anglo-French Music Hall v. Nicoll [1921] 1 Ch. 386, following Espuela Land & Cattle Co. [1909] 2 Ch. 187 and Fraser & Chalmers Ltd. [1919] 2 Ch. 114 in preference to National Telephone Co. [1914] 1 Ch. 755.

A guarantor of preference dividends who has made payments pursuant to the guarantee can claim only to be subrogated to the rights of preference shareholders and cannot claim to be repaid as a creditor by the company 1.

Arrears of dividend.

Arrears of dividend cannot be paid up to the date of the winding up unless such dividends have in fact been declared, or unless the articles contain express provisions to the effect 2. Where there were arrears of dividend on preference shares, they remained arrears of dividend and could only be paid out of profits, and neither did the arrears, nor the interest, became a debt due from the company different in character from the obligation to pay current dividends 3. The cause of action for recovery of such arrears is governed by art. 116 or art. 120 of the Limitation Act IX of 1908 3. The word "registered" in art. 116 of the Limitation Act includes a deed registered under the Companies Act and is not confined to a deed registered under the Registration Act XVI of 1908 3.

As to distribution of arrears of dividend to the ordinary shareholders see the cases noted below 4.

Payment in cash.

Shareholders can insist upon payment of dividend in cash unless there is an express agreement to accept shares or debentures 5.

Payable elsewhere.

Where the dividends were by agreement between the parties to be paid in Australia, the company was deemed to have discharged its obligation by paying in Australian currency that which was in Australia legal tender for the nominal amount of the dividend warrant 6.

Payment by cheque.

Where the articles provide that dividend may be paid by cheque or warrant sent by post to the registered address of each shareholder, the posting of the warrant amounts to payment and if the warrant is lost, the shareholder's remedy is to sue upon the lost warrant. But where the dividend warrant is lost the company can demand an indemnity before issuing another 7.

Only members on the register on the date of declaration are entitled.

As between a company and its members, and subject to the articles, only those members who are on the register when the dividend is declared are entitled to participate in it. But as between the vendor and purchaser of shares, where the contract for sale is silent as to dividends, the purchaser is entitled to dividends declared on the shares either before or after the date fixed for completion of the contract but unpaid at the date of the contract, although the dividend is declared in respect of a period antecedent to such date 8.

If the memorandum or the articles give a preferential right in respect of dividend, the dividend is *prima facie* cumulative, *i. e.*, if the money applicable to dividend in one year is not sufficient to pay the preference dividend, the money so applicable in future years has to make up the deficiency including arrears, before anything is paid as dividend

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1. Walters' Deed of Guarantee [1933] Ch. 227 C. A.
2. Crichton's Oil Co. [1902] 2 Ch. 86; New Chinese Antimony Co. [1916] 2 Ch. 115.
3. Bai Lalita v. Tata Iron & Steel Co. [1940] 42 Bom. L. R. 57, F. B., [1940] B. 97, [1940] Bom. 165 F. B.
4. First Garden City v. Bonham-Carter [1928] Ch. 53; *in re* Wakley [1920] 2 Ch. 205, 228.
5. Hoole v. Great Western Ry. Co. [1868] 3 Ch. App. 262.
6. Adelaide Electric Supply Co. v. Prudential Assurance Co. [1934] A. C. 122.
7. Thairwall v. Great Northern Ry. Co. [1910] 2 K. B. 509.
8. Black v. Homersham [1878] 39 L. T. 671.

to the holder of other shares 1. A provision that the profits are to be applied first in paying a dividend on the preference shares and secondly on the ordinary shares, gives the preference shareholders a cumulative dividend 2, unless any other clause in the articles shows that the profits of each year are to be distributed between the preference and ordinary shareholders on the basis named 3. But a declaration that a preferential dividend is to be paid "out of the net profits of each year" and after such payment a dividend on the ordinary shares, does not give a right to claim cumulative dividend 4.

See notes to s. 6, and regs. 3 and 4.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

In general a company is entitled to place profits to a depreciation or to a reserve fund, and dissentient shareholders, in the absence of a declaration of dividend or bonus or a winding up, cannot challenge the decision of the majority 5.

Carrying profits to reserve.

A company may, without any special authority in the articles, carry profits to reserve and use the reserve in the business 6, or invest it in securities 7. But if the articles expressly provide that the profits are to be applied in particular proportions among the different classes of shareholders and contain no provision for a reserve fund, they cannot be carried to reserve 8. As to the new provision for reserve funds to be maintained by banking companies see s. 277K.

Right of preference shareholders.

The right of the preference shareholders to dividend is, in the absence of an express agreement to the contrary, subject to the directors' right to carry sums to the reserve 9. In such a case "it will be the duty of the directors to fix the amount of the fund to be retained with reference to the general interest of all classes of shareholders and not to favour any one class at the expense of the others" 10.

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1. Miln v. Arizona Copper Co. [1899] 36 Sc. L. R. 741 ; New Chinese Antimony Co. [1916] 2 Ch. 115.
2. Ibid.
3. Foster v. Coles [1906] 22 T. L. R. 555.
4. Adair v. Old Bushmills Distillery [1908] W. N. 24.
5. Sir Dinshaw Petit, *in re* [1927] B. 371, 51 Bom. 372.
6. Hoare & Co. [1904] 2 Ch. 208.
7. Burland v. Earle [1902] A. C. 83 at p. 95.
8. R. Paterson & Sons v. Paterson [1916] W. N. 352, [1917] S. C. 13 H. L.
9. Bond v. Barrow H. Steel Co. [1902] 1 Ch. 353 ; Fisher v. Black & White Publishing Co. [1901] 1 Ch. 174 ; Crichton's Oil Co. (supra) ; Bagot v. Clipper [1902] 1 Ch. 146, 158.
10. Per Lord Cranworth in Henry v. Great Northern Ry. [1857] 1 De G. & J. 606 at p. 638.

Profits carried to reserve.

Where the articles specify a particular method of placing amounts to reserve, the provisions must be complied with 1. Profits carried to a reserve fund remain profits unless and until they are effectually capitalized 2 and may be distributed as dividends 3, though there is a loss on the capital account 4. But as to the right of debenture-holders to intervene see *Tilt Cove Copper Co.* 5.

Specific provision in the articles.

Where the articles provide that after allowing for all charges the profits should be applied in payment of dividends, the directors cannot apply any portion of the profits in creating a reserve fund 6. The articles may be so framed as to prevent the application of the reserve fund to the payment of dividends 7.

100. If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. *The directors shall cause to be kept proper books of account with respect to—*

(*a*) *all sums of money received and expended by the company and the matters in respect of which the receipts and expenditure take place ;*

(*b*) *all sales and purchases of goods by the company ;*

(*c*) *the assets and liabilities of the company.*

By the Companies (Amendment) Act, 1936, the above regulation 103 has been substituted for the original regulation 103 which was as follows :—

103. The directors shall cause true accounts to be kept—

(*a*) of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place ; and

(*b*) of the assets and liabilities of the company.

104. *The books of account shall be kept at the registered office of the company or at such other place as the directors shall think fit and shall be open to inspection by the directors during business hours.*

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1. Evling v. Israel & Oppenheimer Ltd. [1918] 1 Ch. 101.
2. Bouch v. Sproule [1887] 12 App. Cas. 385 ; re Alsbury [1890] 45 Ch. D. 237.
3. Lever v. Land Securities Co. [1891] 8 T. L. R. 94.
4. Hoare & Co. (supra) at p. 213.
5. [1913] W. N. 243.
6. R. Paterson & Sons v. Paterson (supra).
7. As in Eastern & Australian S. S. Co. [1903] W. N. 31.

By the Companies (Amendment) Act, 1936, the above regulation has been substituted for the original regulation 104 which was as follows :—

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

The articles of all companies shall be deemed to contain this regulation ; see s. 17(2).

As a rule the shareholders have no right to inspect the accounts of the company 1.

Rights of shareholders and directors.

In the absence of any special provision a director has, but a mere shareholder has not, a right to inspect documents held by the company's solicitor on its behalf 2.

In *Bank of Bombay v. Suleman Somje* 3 the Judicial Committee considered the position of a member of a corporation who had no statutory rights of inspection and no express contractual rights. His rights depended upon common law. Their Lordships said : "The privilege of inspection is now confined to cases where a member of a corporation has in view some definite right or object of his own and to those documents which would tend to illustrate such right or object." They further say that if none of the plaintiffs had any special interest different from that of his fellow members or any definite purpose or object in obtaining the inspection asked for other than to see if by possibility the company's affairs may be better administered than are at present, their suit failed.

Where the members have under the articles a contractual right of inspection, that cannot be reduced by the power given to make rules into a mere right to claim inspection subject to the committee's approval. But a right of inspection does not carry with it a right to take copies. There must however be some other circumstance to make it necessary to imply such a term as to make the statutory right to inspect otherwise of no avail or practically useless. The extent of the right to take copies under the common law depends on the interest of the member 4.

There is no provision in the Act entitling a member to inspection by proxy, even though she be a woman ; nor can a shareholder beforehand seek to obtain information which can be supplied at the general meeting and ask the Court to stop the meeting till the information is supplied 5.

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1. Hals. p. 266.
2. Burn v. London & S. W. Coal Co. [1890] W. N. 209, 7 T. L. R. 118.
3. [1908] 32 Bom. 406 (P.C.). See also Rameshwar v. Calcutta Wheat & Seed Assn. [1938] C. 89, 42 C. W. N. 161.
4. Rameshwar v. Calcutta Wheat & Seed Assn. (supra).
5. Amai Fakirji v. Pearson [1926] S. 295, 97 I. C. 84.

In case of winding up. Provision in the articles giving a right to inspect the books of the company ceases to apply when the company goes into voluntary liquidation 1, but it may be otherwise if the winding up be for the purposes of re-construction 2.

As to inspection of documents after the order for a winding up by or subject to the supervision of the Court see s. 241 and notes.

106. *The directors shall as required by sections 131 and 131A of the Indian Companies Act, 1913, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, [income and expenditure accounts], balance sheets, and reports as are referred to in those sections.*

The above regulation has been substituted for the original regulation 106 by the Companies (Amendment) Act, 1936. The original regulation 106 was as follows:

106. Once at least in very year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

The words within square brackets were added by the amending Act II of 1938.

See ss. 131 and 132 and notes thereto.

107. The profit and loss account shall *in addition to the matters referred to in sub-section (3) of section 132 of the Indian Companies Act, 1913,* show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in case where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

The words in italics have been inserted by the Companies (Amendment) Act, 1936.

The articles of all companies shall be deemed to contain this regulation; see s. 17(2).

This regulation is not in Table A of the English Act.

Writing back to profit account. Mr. Justice Russel has said in the following case—"Unless there is anything in the Companies Act or in the constitution of the company to prohibit it, the shareholders may, if they think fit, write back to profit account so much of the depreciation written off goodwill as has proved to have been in excess of proper requirement" 3.

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1. Yorkshire Fibre Co. [1870] 9 Eq. 650.
2. Morgan's case [1885] 28 Ch. D. 620.
3. Stapley v. Read Brothers Ltd. [1924] 2 Ch. 1, 5.

As to what is profit see notes to reg. 97, and as to the requirements of this regulation see the second proviso to sub-s. (2) of s. 17.

108. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund.

See s. 131 and notes.

Director's liability for report.

A director is not necessarily personally responsible for reports and balance-sheets stated to be issued "by order of the directors" 1. As to a person who, though named as a director but has resigned, see the case of *Dovey* v. *Cory* 2.

Balance-sheet contained in an annual report sent by the company to the shareholders and filed with the registrar stating the total amount of the company's indebtedness under its debentures for principal and interest, although not sent to the debenture-holders, is a sufficient acknowledgment of the liability under the debentures 3.

109. A copy of the balance-sheet and report shall, [*fourteen*] days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

The word within square brackets was substituted for the word "seven" by the amending Act II of 1938.

110. The directors shall in all respects comply with the provisions of sections 130 to 135 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force.

This regulation is not in Table A of the English Act.

Audit.

111. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force.

See notes to ss. 144 and 145. As to the misfeasance of auditors see notes to s. 235.

Notices.

112. (1) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address or (if he has no registered address in British India) to the address, if any, within British India

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1. Denham & Co. [1884] 25 Ch. D. 752.
2. [1901] A. C. 477.
3. Burnham (Viscount) v. Atlantic &c. Co. [1928] Ch. 836.

supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

The articles of all companies shall be deemed to contain this regulation and regulations 113 to 116; see s. 17(2).

For definition of "British India" see s. 3 (7) of the General Clauses Act X of 1897.

Notice in the case of a deceased member.

Where under the articles notice of a general meeting is to be given to "members" and such notice may be served upon any "member" either personally or by sending it prepaid by post addressed to "such member" at his registered address, it is not necessary, in the case of a deceased member, either to send a notice addressed to him at his registered address or to serve his legal representatives, unless they have themselves become "members" by formal registration 1.

Where the company through its officers has actual knowledge of the death of a shareholder, it cannot however rely upon a notice addressed to the deceased member for basing upon it a resolution forfeiting unclaimed dividend; for such resolution must be *strictissima juris* 2. But if the company has no knowledge of his death, a notice served on him in the manner prescribed is effective 3. See reg. 116 *post*.

Notice sent by post.

For ordinary purposes a notice sent by post will be deemed to have been served 4, even if in fact it never reached the addressee. But making over a letter to a postman outside the pillar box is not posting 5. The regulation however does not apply so as to affect the member with notice of a misrepresentation (which notice was in fact given by the document), if the document does not reach his hands 6.

Date of service.

Provisions in the articles regulating the date on which a notice is deemed to be served must be considered; but an article which provides that the day of service of a notice is to be counted in the relevant number of days must be disregarded 7.

Substituted service.

An article like this does not validate an order for substituted service of legal proceedings on a member, if the registered address is not in fact his residence or place of business 8.

Presumption.

The words "unless the contrary is proved" in clause (2) make the presumption a rebuttable one 9.

113. If a member has no registered address in British India, and has not supplied to the company an address within

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1. Allen v. Gold Reefs of West Africa [1900] 1 Ch. 656, 670; Tricumdas Mills Co. v. Haji Saboo [1902] 4 Bom. L. R. 215.
2. Ward v. Dublin &c. Co. [1919] 1 I. R. 5.
3. James v. Buena Ventura Syndicate [1896] 1 Ch. 456; New Zealand Gold Co. v. Peacock [1894] 1 Q. B. 622.
4. Ramdas v. Cotton Ginning Co. [1887] 9 All. 366.
5. London & Northern Bank [1900] 1 Ch. 220.
6. London & Staffordshire Fire Insurance Co. [1883] 24 Ch. D. 149.
7. Hector Whaling Ltd. [1936] 1 Ch. 208, 154 L. T. 342.
8. *Ex p.* Chatteris [1875] 10 Ch. App. 227.
9. King v. Westminister Unions [1917] 1 K. B. 832.

British India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

See notes under reg. 112.

Notice by advertisement. A notice given by advertisement will be deemed to have been given at the time of the publication of the advertisement [1].

For definition of "British India" see s. 3 (7) of the General Clauses Act X of 1897.

114. A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

See notes under reg. 112.

115. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at the address (if any) in British India supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

See notes under reg. 112.

116. Notice of every general meeting shall be given in some manner hereinbefore authorised to (*a*) every member of the company (including bearers of share-warrants) except those members who (having no registered address within British India) have not supplied to the company an address within British India for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of the death or insolvency of a member, who but for his death or insolvency would be entitled to receive, notice of the meeting. * *

The last portion of the regulation, viz., "No other persons shall be entitled to receive notices of general meetings" has been omitted by the amending Act II of 1938.

See notes under reg. 112

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[1] Mercantile Investment Co. v. International Co. of Mexico. [1893] 1 Ch. 484 n., 488 n.

TABLE B.

(See sections 249 and 262).

TABLE OF FEES TO BE PAID TO THE REGISTRAR.

1.—By a company having a share capital.

	Rs.	A.	P.
1. For registration of a company whose nominal share capital does not exceed Rs. 20,000, a fee of	40	0	0
2. For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)—			
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees ...	20	0	0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 10,00,000 rupees ...	5	0	0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 10,00,000 rupees. ...	1	0	0
3. For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration :			
Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.			
4. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			

	Rs.	As.	P.
5. For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up ...	5[1]	0	0
6. For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of ...	5[2]	0	0
II.—*By a company not having a share capital.*			
1. For registration of a company whose number of members, as stated in the articles of association, does not exceed 20 ...	40	0	0
2. For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 ...	100	0	0
3. For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 5 members, or less number than 50 members, after the first 100.			
4. For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of ...	400	0	0
5. For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable, [3] [in respect of such increase] if such increase had been stated in the articles of association at the time of registration :* Provided that no one company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking			

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[1] For reduction of this *see* Notification No. 6161-26 dated the 22nd July, 1916 in Appendix E towards its end.

[2] This fee of Rs. 5 has been reduced to Rs. 3; see Notification No. 40 (1)—Tr. (C. L.)/41 dated 23rd August, 1941 printed in the first portion of App. E.

[3] These words were inserted by Notification No. 1—D, dated 3rd November, 1917, *see* Gazette of India, 1917, Pt. I, p. 1787.

* The figure "5" was omitted, *ibid.*

	Rs.	As.	P.
into account the fee paid on the first registration of the company.			
6. For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act the same fee as is charged for registering a new company.			
7. For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up	5[1]	0	0
8. For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of	5[2]	0	0

THE SECOND SCHEDULE.

(*See* sections 98 and 154.)

FORM I.

THE INDIAN COMPANIES ACT, 1913.

STATEMENT IN LIEU OF PROSPECTUS

filed by

....LIMITED,

pursuant to section 98 of the Indian Companies Act, 1913.
Presented for filing by

The nominal share capital of the company.	Rs...............
Divided into.................	*shares of Rs.........each.* *shares of Rs.........each.* *shares of Rs.........each.*

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1. See note 1, last page.
2. See note 2, last page.

Amount (if any) of above capital which consists of redeemable preference shares.	*shares of Rs.........each.*
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors and managers or proposed managers, and any provision in the articles, or in any contract, as to appointment of and remuneration payable to directors or managers.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1.——*shares of Rs............fully paid.* 2.——*shares upon which Rs....... per share credited as paid..* 3. *Debenture Rs.......* 4. *Consideration.*
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company. *Amount (in cash, shares or debentures) payable to each separate vendor.*	

Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill.	*Total purchase price . Rs..........* *Cash . Rs..........* *Shares . Rs..........* *Debentures . Rs..........* *Goodwill . Rs..........*
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or *Rate of the commission······*	*Amount paid.* *Amount payable.* *Rate per cent.*
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses.	*Rs..................*
Amount paid or intended to be paid to any promoter. *Consideration for the payment.*	*Name of promoter············* *Amount Rs..................* *Consideration.*
Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the company or contracts, other than contracts appointing or fixing the remuneration of a managing director or managing agent, entered into more than two years before the delivery of this statement).	

Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the [accounts] of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one*	

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*This word has been substituted for the word "amounts", which was a mistake, by the amending Act II of 1938.

year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.	
(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing.)	______ ______ ______

Date

FORM II.

THE INDIAN COMPANIES ACT, 1913.
STATEMENT IN LIEU OF PROSPECTUS
filed by

....LIMITED,
pursuant to sub-section (1) of section 154 of the Indian Companies Act, 1913.

Presented for filing by

The nominal share capital of the Company.	*Rs*..
Divided into	*Shares of Rs*................*each* *Shares of Rs*................*each* *Shares of Rs*................*each*
Amount (if any) of above capital which consists of redeemable preference shares.	*Shares of Rs*................*each*

The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of Directors or proposed Directors and Managers or proposed Managers, and any provision in the Articles, or in any contract, as to appointment of and remuneration payable to Directors or Managers.	
If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1. *Shares of Rs......fully paid.* 2. *Shares upon which Rs...... per share credited as paid.* 3. *Debenture Rs.........* 4. *Consideration.*
Names and addresses of vendors of property (1) purchased or acquired by the Company within the two years preceding the date of this Statement or (2) agreed or proposed to be purchased or acquired by the Company.	
Amount (in cash, shares or debentures) payable to each separate vendor.	

Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill.	*Total purchase price* . . Rs. .... *Cash* . . Rs. .... *Shares* . . Rs. .... *Debentures* . . Rs. .... *Goodwill* . . Rs. ....
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any share or debentures in the Company; or Rate of the commission.	*Amount paid.* *Amount payable.* *Rate per cent.*
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Unless more than two years have elapsed since the date on which the Company was entitled to commence business :— *Estimated amount of preliminary expenses.* *Amount paid or intended to be paid to any promoter.* *Consideration for the payment.*	Rs. *Name of promoter.* *Amount* Rs. *Consideration.*
Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the Company or contracts, other than contracts appointing or fixing the remuneration of a	

Managing Director or Managing Agent, entered into more than two years before the delivery of this statement).	
Times and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the Auditors of the Company.	
Full particulars of the nature and extent of the interest of every Director in the promotion of or in the property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be acquired by the Company or where the interest of such a Director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a Director, or otherwise for services rendered by him or by the firm in connection with the promotion of the formation of the company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of	

the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirements shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.	
(Signatures of the persons above named as Directors or proposed Directors or of their agents authorised in writing.)	

Dated the *day of*

By the Companies (Amendment) Act, 1936, the above Second Schedule has been substituted for the original Second Schedule which was as follows:

THE SECOND SCHEDULE.

(See Section 98.)

STATEMENT IN LIEU OF PROSPECTUS.

filed by

LIMITED,

pursuant to section 98 of the Indian Companies
Act, 1913.
Presented for filing by
THE INDIAN COMPANIES ACT, 19 .

LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal share capital of the company.	Rs.
Divided into	Shares of Rs. each " " " " " "
Names, descriptions and addresses of directors or proposed directors and of the managers or proposed managers.	
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of Rs. fully paid.
The consideration for the intended issue of those shares and debentures.	2. shares upon which Rs. per share credited as paid. 3. Debenture Rs. 4. Consideration.
Names and addresses of (*a*) vendors of property purchased or acquired, (*b*) or proposed to be purchased or acquired by the company.	
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price ... ... Rs. Cash ... ... " Shares ... ... " Debentures ... " Goodwill ... ... Rs.
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company or	Amount paid " payable.
Rate of the commission	Rate per cent.

(*a*) For definition of vendor, *see* section 94 of the Indian Companies Act, 1913.
(*b*) See section 95 of the Indian Companies Act, 1913.

The nominal share capital of the company.	Rs.
Estimated amount of preliminary expenses	Rs.
Amount paid or intended to be paid to any promoter... Consideration for the payment	Name of promoter Amount Rs. Consideration :—
Dates of, and parties to every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise by any person either to induce him to become, or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance-sheets or reports of the auditors or other reports.	Nature of provisions.

(Signature of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

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____

____

THE THIRD SCHEDULE.

FORM A.

(See sections 6 and 151.)

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st.—The name of the company is "The Eastern Steam Packet Company, Limited."

2nd.—The registered office of the company will be situate in the province of Bombay.

3rd.—The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—The share capital of the company is two hundred thousand rupees, divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposit our respective names.

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.
1. A. B. of , merchant....................................	200
2. C. D. „ „	25
3. E. F. „ „	30
4. G. H. „ „	40
5. I. J. „ „	15
6. K. L. „ „	5
7. M. N. „ „	10
Total shares taken ...	325

Dated the day of 19 .

Witness to the above signatures.

X. Y. of .

FORM B.

(See sections 7 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Mutual Calcutta Marine Association, Limited."

2nd.—The registered office of the company will be situate in Calcutta.

3rd.—The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one hundred rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the day of

Witness to the above signatures.

X. Y. of

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

Number of Members.

1. The company for the purpose of registration is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business or the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained [1].

General Meetings.

4. The first general meeting shall be held at such time not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings ; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, call an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to call a general meeting : if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members may themselves call a meeting.

Proceedings at General Meetings.

10. Fourteen days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting ; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of remuneration of the auditors.

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[1] See United Kingdom Assn. v. Nevill [1887] 19 Q. B. D. 110 ; Ocean Assn. v. Leslie [1888] 22 Q. B. D. 722n. ; Great Britain Assn. v. Wyllie [1888] 22 Q. B. D. 710 ; Montgomerie v. U. K. Assn. [1891] 1 Q. B. 370 ; British Marine Co. v. Jenkins [1900] 1 Q. B. 299 ; Premier Underwriting Assn., Cory's case [1913] 2 Ch. 81. As to the effect of an application for membership agreeing to conform to the regulations of the company see Hickman v. Kent Sheep-breeders' Assn. [1915] 1 Ch. 881, 903.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say) :—if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five : if they exceed ten, there shall be added to the above quorum one for every five additional members with this limitation, that no quorum shall in any case exceed ten.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if called on the requisition of the members, shall be dissolved ; in any other case it shall stand adjourned to the same day in the following week at the same time and place ; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die.*

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot, he may vote by his committee or other legal guardian.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy : Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act, 1913, is in force. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

23. (1) No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

(2) The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form :—

Company, Limited,
I, , of
being a Member of the Company, Limited,
hereby appoint of
as my proxy, to vote for me and on
my behalf at the [ordinary or extraordinary, as the case may be] general
meeting of the company to be held on the day of
and at any adjournment thereof.
Signed this day of

Directors.

25. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall, for all the purposes of the Indian Companies Act, 1913, be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Indian Companies Act, 1913, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting ; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Elections of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

(Here insert *rules as to mode in which business of insurance is to be conducted*).

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders", and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally, or by sending it by post to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N.of

Dated the *day of* 19 .

Witness to the above signatures.

X. Y., of

FORM C.

(*See sections 7 and 151.*)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Snowy Range Hotel Company, Limited."

2nd.—The registered office of the company will be situate in the province of Bengal.

3rd.—The objects for which the company is established are "the facilitating travelling in the Snowy Range, by providing hotels and conveyances by sea and by land for the accomodation of travellers and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding fifty rupees.

6th.—The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each Subscriber.
"1. A. B. of	200
"2. C. D. of	25
"3. E. F. of	30
"4. G. H. of	40
"5. I. J. of	15
"6. K. L. of	5
"7. M.N. of	10
Total shares taken ...	325

Dated the *day of* 19 .

Witness to the above signatures.

X. Y., of

Articles of Association to accompany preceding Memorandum of Association.

1. The share capital of the company is five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A of the Indian Companies Act, 1913, shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of , merchant.
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the *day of* 19 .

Witness to the above signatures.

X. Y., of

FORM D.

(See sections 8 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Patent Stereotype Company."

2nd.—The registered office of the company will be situate in the province of Bombay.

3rd.—The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates of which method P.Q., of Bombay, is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each Subscriber.
"1. A. B. of	3
"2. C. D. of	2
"3. E. F. of	1
"4. G. H. of	2
"5. I. J. of	2
"6. K. L. of	1
"7. M. N. of	1
Total shares taken ...	12

Dated the *day of* 19 .

Witness to the above signature.
X. Y., of

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

2. All the articles of Table A of the Indian Companies Act, 1913, shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of , merchant.
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the *day of* 19 .

Witness to the above signatures.
X. Y., of

FORM E.

AS REQUIRED BY PART II OF THE ACT.

(*See section* 32.)

Summary of Share Capital and Shares of the Company, Limited, made up to the day of 19 (being the day of the first ordinary general meeting in 19).

Nominal share capital Rs. divided into*	shares of Rs. each shares of Rs. each
Total number of shares taken up* to the day of 19 which number, must agree with the total shown in the list as held by existing members.	
Number of shares issued subject to payment wholly in cash	
Number of shares issued as fully paid up otherwise than in cash	
Number of shares issued as partly paid up to the extent of per share otherwise than in cash.	
†There has been called up on each—of shares	Rs.
There has been called up on each—of shares	Rs.
There has been called up on each—of shares	Rs.
‡Total amount of calls received, including payments on application and allotment	Rs.
Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash	Rs.
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share	Rs.
Total amount of calls unpaid	Rs.
Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary	Rs.
Total amount (if any) paid on § shares forfeited	Rs.
Total amount of shares and stock for which share-warrants are outstanding	Rs.
Total amount of share-warrants issued and surrendered respectively since date of last summary	Rs.
Number of shares or amount of stock comprised in each share-warrant	Rs.
Total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act	Rs.

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* When there are shares of different kinds or amounts (*e. g.*, Preference and Ordinary of Rs. 200 or Rs. 100) state the numbers and nominal values separately.

† Where various amounts have been called or there are shares of different kinds, state them separately.

‡ Include what has been received on forfeited as well as on existing shares.

§ State the aggregate number of shares forfeited.

List of persons holding shares in the
Company, Limited, on the day of 19
and of persons who have held shares therein at any time since the dat
of the last return, showing their names and addresses and an account o
the shares so held.

Folio in register ledger containing particulars.	Names, Addresses and Occupations.				Account of Shares.					
	Name in full.	Father's name.	Address.	Occupation or caste.	*Number of shares held by existing Members at date of return.	§Particulars of Shares transferred since the date of the last Return by persons who are still Members.		§Particulars of Shares transferred since the date of the last Return by persons who have ceased to be Members.		Remarks.
						Number.†	Date of Registeration of Transfer.	Number.‡	Date of Registration of Transfer.	

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* State the aggregate number of shares forfeited (if any).

† The aggregate number of shares held, and not the distinctive numbers, must be stated and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

‡ When the shares are of different classes, these columns may be sub-divided so that the number of each class held or transferred may be shown separately.

§ The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the remarks column immediately opposite the particulars of each transfer.

Names and addresses of the persons who are the Directors of the , Limited, on the day of 19 .

Names.	Addresses.

Names and addresses of the persons who are the managers of the , Limited, on the day of 19 .

Names.	Addresses.

Note.—Banking companies must add a list of all their places of business.

I, , do hereby certify that the above list and summary truly and correctly states the facts as they stood on day of , 19 .

(Signature)

(State whether director, manager or secretary).

FORM F.

(*See section* 132.)

. . . .*Limited.*

Balance-Sheet as at. 19

CAPITAL AND LIABILITIES.							PROPERTY AND ASSETS.						
Capital— Authorised Capital...shares of Rs......each.	. .	. .	. .				*Fixed capital expenditure*— (Distinguishing as far as possible between expenditure upon goodwill, land, buildings, lease-holds, railway sidings, plant, machinery, furniture, development of property, patents, trade marks and designs, interest paid out of Capital during construction, etc., and stating in every case the original cost and the additions thereto and deductions therefrom during the year, and the total Depreciations written off under each head. Where sums have been written off on a reduction of capital or a revaluation of assets every				. .	. .	. .
(Distinguishing between the various classes of Capital.) Issued Capital...shares of Rs··· each.	. .	. .	. .										
(i) Shares issued as fully paid up pursuant to any contract without payments being received in cash . . shares of Rs.......each. (ii) Shares issued for payments in cash...shares of Rs......each. Subscribed Capital···shares of Rs......each.	. .	. .	. .	. .	. .	. .							

Amount called up at Rs...... per share						
Less—Calls unpaid—						
(i) due from Managing Agents						
(ii) due from others ...						
Add—Forfeited shares (amount paid up).						
Note.—*Where circumstances permit issued and subscribed capital and amount called up may be shown as one item, e.g.,*						
Issued and Subscribed Capital.... shares of Rs.....each, Rs...... paid up.						
Reserves						
Debentures *stating the nature of security*						
Any Sinking Fund ...						
Any other Fund Created out of Net Profits, including any development fund.						
Any Pension or Insurance Fund						
Provision for Bad and Doubtful						

balance-sheet after the first balance-sheet subsequent to the reduction or revaluation shall show the reduced figures, with the date of and the amount of the reduction made.)						
Preliminary Expenses ...						
Commission or Brokerage ...						
(*Commission or Brokerage paid for underwriting or placing or subscribing shares or debentures until written off.*)						
Discount Allowed on the issue *of shares or so much as has not been written off at the date of the balance-sheet.*						
Stores and Spare Parts ...						
Loose Tools						
Live-stock and Vehicles ...						
Stock in Trade						
(*Stating mode of valuation, e.g., cost or market value.*)						
Bills of Exchange ...						

CAPITAL AND LIABILITIES—*Contd.*					
Debts *(*In the case of Companies other than Banks.*)					
Loans—					
(*a*) *Secured*—					
(*i*) *loans on mortgages or fixed assets*					
(*ii*) *loans on debentures* ...					
(*iii*) *loans from banks, stating the nature of security* ...					
(*iv*) *liabilities to subsidiary companies*					
(*v*) *other secured loans, stating the nature of security* ...					
(*vi*) *interest accrued on mortgages, debentures or other secured loans* ...					
(*b*) *Unsecured*—					
(*i*) *loans from banks* ...					

PROPERTY AND ASSETS—*Contd.*					
[*Book Debts*] *(*other than Bad and Doubtful Debts of a Bank for which Provision has been made to the satisfaction of the Auditors*).					
(*Distinguishing between those considered good and in respect of which the company is fully secured and those considered good for which the company holds no security other than the debtor's personal security, and distinguishing between debts considered good and debts considered doubtful or bad. Debts due by directors or other officers of the company or any of them either severally or jointly with any other persons to be separately stated.*)					
Advances					

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*By Notification No. 24 (25)—Tr. (C.L.) dated 16th January, 1937 the Governor General in Council has been pleased to direct the insertion of these words and these brackets. These alterations came into effect from the 17th January, 1937. Vide Gazette of India dated 16th January, 1937, Part I, P. 83.

The words "Book Debts" within square brackets have been substituted for the words "Book Debits" which were a mistake, by the amending Act II of 1938.

(ii) *fixed deposits* ...	...	
(iii) *short term loans* ...	...	
(iv) *advances by directors or managers and managing agents*	...	
(v) *interest accruing but not due and interest accrued and due*	...	
(vi) *liabilities to subsidiary companies*	...	
		...
Unclaimed Dividends ...		...
Liabilities—		
For Goods supplied ...	...	
For Expenses	...	
For Acceptances ...	...	
For Other Finance ...	...	
Advance payments and unexpired discounts	...	...
(*For the portion for which value has still to be given, e. g , in the case of the following classes of companies*—		
Newspaper, Fire Insurance, Theatre, Club, Banking, Steamship Companies, etc.)		

(*Recoverable in cash or in kind or for value to be received, e. g., Rates, Taxes, Insurance, etc., showing separately*—		
(i) *loans given to subsidiary companies* ...	...	
(ii) *loans including temporary advances made at any time during the year to directors or managers of the company*) ...	...	
Investments ...		...
(*Showing nature of investments and mode of valuation, e.g., Cost or Market value and distinguishing*—		
(i) *investments in Government or trust securities* ...	...	
(ii) *investments in shares, debentures or bonds (showing separately shares fully paid up and partly paid up*)	...	
(iii) *investments in shares, debentures or bonds of subsidiary companies* ...	...	
(iv) *immoveable properties* ...	...	

CAPITAL AND LIABILITIES—*Contd.*							PROPERTY AND ASSETS—*Contd.*						
Profit and Loss ...				...	...	...	*Interest accrued on Investments*				...	...	...
							Cash and other Balances ...				...	...	...
				...	...	...	*Amount in hand* ...	...	...	...			
Contingent Liabilities—							*Balances with Agents and Bankers (in detail showing whether on deposit or current account, etc.)* ...	...	...	...			
Claims against the company not acknowledged as debts ...	...	...	...				*Profit and Loss* ...	...	...	...			
Money for which the company is contingently liable ...	...	...	...										
(Showing separately the amount of any guarantees given by the company on behalf of directors or officers of the company.)													
Arrears of Cumulative Preference Dividends ...	...	...	...										

The information required to be given under any of the items or sub-items in this Form if not included in the Balance-Sheet itself shall be furnished in a separate Schedule or Schedules to be attached to and to from part of the Balance-Sheet.

By the Companies (Amendment) Act, 1936, the above new Form F has been substituted for the original Form F which was as follows :—

FORM F.

(See section 132.)

_______________ LIMITED.

Balance-sheet as at _______________ 19 .

CAPITAL AND LIABILITIES.	Rs.	As.	P.	Rs.	As.	P.	PROPERTY AND ASSETS.	Rs.	As.	P.	Rs.	As.	P.
Capital—							**Fixed Capital Expenditure . . . .**				...	...	...
Authorised Capital...shares of Rs. ......each	...	...	...				(Distinguishing as far as possible between expenditure upon goodwill, land, buildings, leaseholds, railway sidings, plant, machinery, furniture, development of property, patents, trade marks and designs, interest paid out of Capital during construction, etc., and stating in every case the original cost and the total Depreciation written off under each head).						
Issued Capital...shares of Rs. ......each	...	...	...										
Subscribed Capital...shares of Rs. ......each	...	...	...										
Amount called up at Rs......... per share	...	...	...										
less—Calls unpaid	...	...	...										
Add—Forfeited shares (amount paid up	...	...	...	...	...	...	**Preliminary Expenses . . . .**				...	...	...
Reserve Fund or Development Fund.	...	...	...	...	...	...	**Commission or Brokerage . . . .**				...	...	...
							(Commission or Brokerage paid for underwriting or placing shares or debentures until written off.)						

Form F—*Contd.*

CAPITAL AND LIABILITIES—*Contd.*	Rs.	A.	P.	Rs.	A.	P.
Any Sinking Fund				...	...	...
Any other Fund created out of net profits				...	...	...
Any Pension or Insurance Fund .				...	...	...
Provision for Bad and Doubtful Debts (in the case of companies other than banks.)*				...	...	...
Loans on Mortgage or Mortgage Debenture Bonds.				...	...	...
Loans otherwise secured . .				...	...	...
(Stating the nature of security)						
Loans unsecured				...	...	...
Interest . . . . (Accrued on Mortgages, Debentures or other Secured Loans.)				...	...	...
Unclaimed Dividends . . .				...	...	...
Liabilities				...	...	...
For Goods supplied . . .	...	...	...			
„ Expenses	...	...	...			
„ Acceptances	...	...	...			
„ Other Finance	...	...	...			

PROPERTY AND ASSETS—*Contd.*	Rs.	A.	P	Rs.	A.	P.
Stores and Spare Gear . . .				...	...	...
Loose Tools				...	...	...
Live Stock				...	...	...
Stock in Trade				...	...	...
(Stating mode of valuation, *e. g.*, cost or marked-value.)						
Bills of Exchange				...	...	...
Book Debts (other than bad and doubtful debts of a bank for which provision has been made to the satisfaction of the auditors)*				...	...	...
(Distinguishing in the case of a Bank between those considered good and in respect of which the Bank is fully secured and those considered good for which the Bank holds no security other than the debtor's personal security, and distinguishing in all other* cases between debts considered good and debts considered doubtful or bad. Debts due by directors or other officers of the company or any of them either severally or jointly with any other persons to be separately stated in all cases.						

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* See Gazette of India Extraordinary, dated March 29, 1927

Form F—*Contd.*

CAPITAL AND LIABILITIES—*Contd.*	Rs.	A.	P.	Rs.	A.	P.
Advance of Payments and Unexpired Discounts				...	...	...
(For the portion for which value has still to be given, e g., in the case of the following classes of companies—Newspaper, Fire Insurance, Theater, Club, Banking, Steamship Companies, etc.						
Profit and Loss				...	...	...
Balance as per previous Balance-sheet.	...	...	...			
Less—Appropriation thereof ...	...	...	...			
Balance brought forward ...	...	...	...			
Profit since last Balance-sheet ...	...	...	...			
(*N.B.*—These details need not be given if the same be contained in a Profit and Loss account attached to the Balance-sheet.)						
Contingent Liabilities				...	...	...
Claims against the Company not acknowledge as debts.	...	...	...			
Moneys for which the Company is contingently liable.	...	...	...			
Arrears of Cumulative Preference Dividends.	...	...	...			

PROPERTY AND ASSETS—*Contd.*	Rs.	As.	P.	Rs.	A.	P.
Advance				...	...	...
(Recoverable in cash or in kind or for value to be received, *e. g.*, Rates, Taxes, Insurance, etc.)						
Investments				...	...	...
(Nature of Investment and mode of valuation, *e. g.*, cost or market-value.)						
Interest Accrued on Investments						
Cash and other Balances ...				...	...	...
Amount in hand						
Balance with Agents and Bankers (in detail showing whether on deposit or current account, etc.)	...	...	...			
Profit and Loss (giving, in the case of a debit balance, details as far as possible as in the case of a credit balance).	...	...	...			
				...	...	...
				...	...	...

FORM G.

(See section 136.)

Form of Statement to be published by Banking and Insurance Companies and Deposit, Provident, or Benefit Societies.

* The share capital of the company is Rs. divided into shares of Rs. each.

The number of shares issued is . Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.

The liabilities of the company on the thirty-first day of December (or thirtieth of June) were—

Debts owing to sundry persons by the company :
Under decree, Rs.
On mortgages or bonds, Rs.
On notes, bills or hundis, Rs.
On other contracts, Rs.
On estimated liabilities, Rs.

The assets of the company on that day were—
Government securities [stating them], Rs.
Bills of exchange, hundies and promissory notes, Rs.
Cash at the Bankers, Rs.
Other securities, Rs.

FORM H.

(See section 277.)

Information to be supplied in or in addition to the information contained in the Balance-Sheet of a company referred to in Part X.

Liabilities.

1. *Summary of Authorised Share Capital and Issued share Capital.*
2. *Redeembale Preference Shares, stating date on or before which the shares are or are liable to be redeemed.*
3. *Debentures stating the nature of the Security.*
4. *Redeemed debentures which the Company has power to re-issue.*
5. *Loans (a) secured, stating the nature of the security ;*
   (b) unsecured.
6. *Loans from Banks :—*
   (a) Secured, stating nature of security ;
   (b) Unsecured.

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* If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

7. *Profit and Loss Account, showing (unless disclosed in a separate account) :—*

Balance as per previous Balance-Sheet.
Appropriation thereof.
Profit since last Balance-Sheet.

[*Where a company is a holding company, a statement showing how and to what extent the losses, if any, of the subsidiary companies have been provided for either in the accounts of the subsidiary companies or of the holding company or of both.*

If it is not possible to obtain such information, a statement to that effect giving the reasons therefor.

Note.—So far as a holding company has any subsidiary company or companies operating in British India, it shall disclose the particulars required under section 132-A in respect of subsidiary company or companies] 1.

8. *Contingent Liabilities.*

9. *Arrears of Cumulative Preference Dividend.*

Assets.

1. *Fixed Assets, with sufficient particulars to disclose their general nature, and stating how their values are arrived at.*

2. *Preliminary expenses, so far as not written off.*

3. *Any expenses incurred in connection with any issue of share Capital or Debentures, so far as not written off.*

4. *If it is shown as a separate item in or is otherwise ascertainable from the books of the Company, or from any contract for the sale or purchase of any property to be acquired by the Company, or from any documents in the possession of the Company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property the amount of the goodwill and of any patents and trade marks as so shown or ascertained.*

5. *Interest paid on Capital, so far as not written off, showing the Share Capital on which and the rate at which interest has been paid out of Capital during the period to which the accounts relate.*

6. *Discount allowed on Shares issued, so far as not written off.*

7. *Commission paid or allowed in respect of any shares or debentures, so far as not written off.*

8. *Loans outstanding to enable employees or trustees on their behalf to purchase shares in the Company.*

9. *Particulars showing :—*

   (*a*) *the amount of any loans which during the period to which the accounts relate have been made either by the Company or by any other person under a guarantee from or on a security provided by the Company to any director or officer of the*

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1. This portion within square brackets has been inserted by Notification No. 23 (25) Tr. (C. L.) 39, of the Central Government—See Gazette of India of 1st February, 1941 Part I., p. 162.

Company, including any such loans which were repaid during the said period ;

and

(b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof ;

and

(c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the Company or by or from any subsidiary Company.

Note (1).—There shall not be required to be shown :—

(a) in the case of a Company the ordinary business of which includes the lending of money, loans made by the Company in the ordinary course of its business :

or

(b) loans made by the Company to any employee of the Company if the loan does not exceed twenty thousand rupees and is certified by the directors of the Company to have been made in accordance with any practice adopted or about to be adopted by the Company with respect to loans to its employees.

Note (2).—The foregoing shall not apply in relation to a Managing Director of the Company, and in the case of any other director who holds any salaried employment or office in the Company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

[1]* * * *

By the Companies (Amendment) Act, 1936, the above new form H has been inserted.

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[1] Here the following words have been omitted by the order of the Central Government : "(Where a Company is a holding Company then the Balance-Sheet shall disclose the particulars required by section 132A.)"—Vide Notification No. 23(25) Tr. (C. L.) 39 in Gazette of India of the 1st February, 1941, Part I, p. 162.

THE FOURTH SCHEDULE.

(See section 290.)

ENACTMENTS REPEALED.

1 Year.	2 No.	3 Subject or short title.	4 Extent of repeal.
1882	VI	The Indian Companies Act, 1882.	So much as has not been repealed.
1887	VI	The ndian Companies Act, (1882) Amendment Act, 1887.	The whole.
1891	XII	The Amending Act, 1891 . . .	So much of the Second Schedule as relates to the Indian Companies Act, 1882.
1895	XII	The Indian Companies (Memorandum of Association) Act, 1895.	The whole.
1899	IX	The Indian Arbitration Act, 1899.	The second proviso to section 3 relating to the Indian Companies Act, 1882.
1900	IV	The Indian Companies (Branch Registers) Act, 1900.	The whole.
1910	IV	The Indian Companies (Amendment) Act, 1910.	The whole.

APPENDIX A.

War Donations and Investments (Companies) Act No. XXXVII of 1940.

(Received the assent of the Governor General on the 27th November, 1940).

An Act to enable companies in British India to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war.

Whereas it is expedient to enable companies in British India to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war ;

And whereas it is also expedient to remove doubts as to the legality of such donations and investments where already made ;

It is hereby enacted as follows :—

Short title. 1. This Act may be called the War Donations and Investments (Companies) Act, 1940.

Interpretation. 2. In this Act "Government loan" includes a loan floated by the Government of the United Kingdom.

Power of companies to make donations and investments. 3. Any company formed and registered under the Indian Companies Act, 1913,[1] or under the Indian Companies Act, 1882,[2] or under the Indian Companies Act, 1866,[3] or under any Act or Acts repealed thereby may, notwithstanding anything contained in the Indian Companies Act, 1913, and notwithstanding that the memorandum of association or the articles of association of the company do not enable it so to do, by special resolution authorise the making of a donation from the company's assets to a public fund formed, or the making of an investment of the company's assets in a Government loan floated, for the purpose of assisting the prosecution of the present war.

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[1] Act VII of 1913.

[2] Act VI of 1882.

[3] Act X of 1866.

Validation of donations and investments already made. 4. Any donation to a public fund formed, and any investment in a Government loan floated, for the purpose of assisting the prosecution of the present war made by any company to which this Act applies between the 3rd day of September, 1939, and the commencement of this Act shall be as valid in all respects as if it had been made in accordance with the provisions of section 3, and after the commencement of this Act.

Decision of doubts. 5. If any question arises whether for the purposes of this Act a loan is a Government loan floated for the purpose of assisting the prosecution of the present war or whether a fund is a public fund formed for the purpose of assisting the prosecution of the present war, the question shall be decided by the Central Government whose decision shall be final.

APPENDIX B.

*Table A in the First Schedule to the Indian Companies Act VI of 1882.**

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

(1) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2) Every member shall, on payment of eight annas or such less sum as the Company in general meeting may prescribe, be entitled to a certificate under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

(3) If such certificate is worn out or lost, it may be renewed on payment of eight annas or such less sum as the Company in general meeting may prescribe.

Calls on Shares.

(4) The directors, may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

(5) A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

(6) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7) The directors may, if they think fit, receive, from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for and, upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the

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*See s. 290 (1) (c) of the Indian Companies Act, 1913 (VII of 1913).

shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

(8) The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

(9) Shares in the Company shall be transferred in the following form :—

I, A B, of , in consideration of the sum of rupees paid to me by C D of , do hereby transfer to the said C D the share (or shares) numbered standing in my name in the books of the Company, to hold unto the said C D, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof ; add I, the said C D, do hereby agree to take the said share (or shares) subject to the same conditions. As witness our hands the day of .

(10) The Company may decline to register any transfer of shares made by a member who is indebted to them.

(11) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

(12) The executors or administrators of a deceased member shall be the only persons recognised by the Company as having any title to his share.

(13) Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of the member or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may, from time to time, be required by the Company.

(14) Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16) The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the Company shall register the transferee as a member.

Forfeiture of Shares.

(17) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call together with interest and any expenses that may have accrued by reason of such non-payment.

(18) The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19) If the requisition of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20) Any share so forfeited shall be deemed to be the property of the Company and may be disposed of in such manner as the Company in general meeting thinks fit.

(21) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

(22) A solemn declaration in writing, made before a Magistrate, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase; and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such call.

Conversion of Shares into Stock.

(23) The directors may, with the sanction of the Company previously given in general meeting, convert any paid up shares into stock.

(24) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.

(25) The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof, respectively, the same privileges and advantages for the purpose of voting at meetings of the Cpmpany and for other purposes as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

(26) The directors may, with the sanction of a special resolution of the Company previously given in general meeting, increase its capital by the issue of new shares; such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

(28) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

(29) The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place as the directors may determine.

(30) Subsequent general meetings shall be held, once at the least in every year, at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one fifth in number of the members of the Company, convene an extraordinary general meeting.

(33) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(34) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General meeting.

(35) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(37) No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business. Such quorum shall be ascertained as follows, that is to say:—If the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed twenty.

(38) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place; and if, at such adjourned meeting, a quorum is not present, it shall be adjourned *sine die*.

(39) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.

(40) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company,. shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43) If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes of Members.

(44) Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; and, if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(46) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any

share that he has acquired by transfer, at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48) Votes may be given either personally or by proxy.

(49) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or, if such appointor is a corporation, under their common seal, and shall be attested by one or more witnesses. No person shall be appointed a proxy who is not a member of the Company.

(50) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51) Any instrument appointing a proxy shall be in the following form :—

Company, Limited.
I, , of , being
a member of the Company, Limited, and
entitled to vote or votes, hereby appoint
, of , as my proxy to vote for me
and on my behalf at the [ordinary *or* extraordinary *as the case may be*] general meeting
of the Company to be held on the day of , and at any
adjournment thereof (*or* at any meeting of the Company that may be held in the year
).

As witness my hand, this day of
Signed by the said in the presence of

Directors.

(52) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(53) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

Powers of Directors.

(55) The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company and may exercise all such powers of the Company as are not by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act and to such regulations, being not inconsistent with the aforesaid regulations, or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

(57) The office of directors shall be vacated—

If he, or any partner of his, or the firm of which he is a member, holds any other office or place of profit under the company;
if he becomes bankrupt or insolvent;
if he is punished under any of the penal provisions of the foregoing Act;
if he is concerned in or participates in the profits of any contract with the Company.

But the above rules shall be subject to the following exceptions :—that no director shall vacate his office by reason of his being a member of any Company which has entered into contracts with, or done any work for, the Company of which he is director; nevertheless, he shall not vote in respect of such contract or work, and, if he does so vote, his vote shall not be counted.

Rotation of Directors.

(58) At the first ordinary meeting after the registration of the Company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

(60) A retiring director shall be re-eligible.

(61) The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on, from time to time until their places are filled up.

(63) The Company may, from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65) The Company in general meeting may by a special resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

(66) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but, if no such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committe so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

(69) A committe may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and, in case of an equality of votes, the chairman shall have a second or casting vote.

(71) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

(72) The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73) No dividend shall be payable except out of the profits arising from the business of the Company.

(74) The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

(76) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company.

(77) No dividend shall bear interest as against the Company.

Accounts.

(78) The directors shall cause true accounts to be kept—

of the stock in trade of the Company;
of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place; and
of the credits and liabilities of the Company.

The books of account shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general meetings, shall be open to the inspection of the members during the hours of business.

(79) Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year made up to a date not more than three months before such meeting.

(80) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81) A balance-sheet shall be made out in every year and laid before the Company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

(83) Once at the least in every year the accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

(84) The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the Company in general meeting.

(85) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86) The auditors may be members of the Company, but no person is eligible as an auditor who is interested otherwise than as a member in any transactions of the

Company, and no director or other officer of the Company is eligible during his continuance in office.

(87) The election of auditors shall be made by the Company at their ordinary meeting in each year.

(88) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.

(89) Any auditor shall be re-eligible on his quitting office.

(90) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91) If no election of auditors is made in manner aforesaid the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year and fix the remuneration to be paid to him by the Company for his services.

(92) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(93) Every auditor shall have a list delivered to him of all books kept by the Company, and shall at all reasonable times have access to the books and accounts of the Company. He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

(94) The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory. Such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

(95) A notice may be served by the Company upon any member either personally or by sending it through the post in a letter addressed to such member at his registered place of abode.

(96) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

APPENDIX C.

Table A in Schedule to Act X of 1866.

This is the same as Table A of Act VI of 1882, printed as Appendix B, with the following variation in Regulation (57):—

(57) The office of Director shall be vacated—

If he holds any other office or place of profit under the company;
If he becomes bankrupt or insolvent;
If he is concerned in or participates in the profits of any contract with the company;

[The last paragraph of Regulation (57) in Table A of Act X of 1866 is the same as that in Regulation (57) in Table A of Act VI of 1882 beginning with the words "But the above rules………"].

APPENDIX D.

*Table B in Schedule to Act XIX of 1857.**

REGULATIONS FOR MANAGEMENT OF THE COMPANY.

Shares.

1. No person shall be deemed to have accepted any share in the Company unless he has testified his acceptance thereof by writing under his hand in such form as the Company from time to time directs.

2. The Company may from time to time make such calls upon the shareholders, in respect of all moneys unpaid on their shares, as they think fit, provided that twenty-one days' notice at least is given of each call; and each shareholder shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the Company.

3. A call shall be deemed to have been made at the time when the resolution authorizing such call was passed.

4. If, before or on the day appointed for payment, any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of 5 per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

5. The Company may, if they think fit, receive, from any of the shareholders willing to advance the same, all or any part of the moneys due upon their respective shares beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the shareholder paying such sum in advance and the Company agree upon.

6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

7. The Company may decline to register any transfer of shares made by a shareholder who is indebted to them.

8. Every shareholder shall, on payment of such sum not exceeding eight annas as the Company may prescribe, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

9. If such certificate is worn out or lost, it may be renewed on payment of such sum, not exceeding eight annas, as the Company may prescribe.

10. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

11. The executors or administrators or representatives of a deceased shareholder shall be the only persons recognized by the Company as having any title to his share.

12. Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any shareholder, or in consequence of the marriage of any female shareholder or in any way other than by transfer, may be registered as a shareholder upon such evidence being produced as may from time to time be required by the Company.

13. Any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.

14. The person so becoming entitled shall testify such election by executing to his nominee a transfer of such share.

15. The instrument of transfer shall be presented to the Company accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the Company shall register the transferee as a shareholder.

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* *See* s. 290 (1) (*b*) of the Indian Companies Act, 1913 (VII of 1913).

Forfeiture of Shares.

16. If any shareholder fails to pay any call due on the appointed day, the Company may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with any interest that may have accrued by reason of such non-payment.

17. The notice shall name a further date, and a place or places, being a place or places at which calls of the Company are usually made payable, on and at which such call is to be paid; it shall also state that, in the event of non-payment at the time and place appointed, the shares in respect of which such call was made will be liable to be forfeited.

18. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

19. Any shares so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company thinks fit.

20. Any shareholder whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

Increase in Capital.

21. The Company may, with the sanction of the Company previously given in general meeting, increase its capital.

22. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

General Meetings.

23. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the Company, and at such place as the directors may determine.

24. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the [1] [first Monday in February] in every year, at such place as may be determined by the directors.

25. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

26. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the Company, convene an extraordinary general meeting.

27. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

28. Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting; if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

29. Seven days' notice at the least, specifying the place, the time, the hour of meeting, and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner (if any) as may be prescribed by the Company.

30. Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters continued in the notice given of such meeting.

31. The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the Company.

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[1] The bracketted portion read originally as follows: " day of "

32. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business; and such quorum shall be ascertained as follows (that is to say); if the shareholders belonging to the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after fifty, with this limitation, that it shall not be necessary for any quorum in any case to exceed forty.

33. If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved; in any other case it shall stand adjourned to the following day at the same time and place; and if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned *sine die.*

34. The chairman (if any) of the Board of Directors shall preside as chairman at every meeting of the Company.

35. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be chairman of such meeting.

36. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

37. At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

38. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Shareholders.

39. Every shareholder shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every 10 shares held by him beyond the first hundred shares.

40. If any shareholder is a lunatic or idiot, he may vote by his committee; and if any shareholder is a minor, he may vote by his guardian, or any one of his guardians if more than one.

41. If more persons than one are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

42. No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares.

43. Votes may be given either personally or by proxies; a proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under their common seal.

44. No person shall be appointed a proxy who is not a shareholder, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which be proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of one month from the date of its execution.

Directors.

45. The number of the directors, and the names of the first directors shall be determined by the subscribers of the memorandum of association.

46. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

Powers of Directors.

47. The business of the Company shall be managed by the directors, who may exercise all such powers of the company as are not by this Act or by the articles of association (if any) declared to be exercisable by the Company in general meeting, subject nevertheless to any resolutions of the articles of association, to the provisions of this Act, and to such regulations, not being inconsistent with the aforesaid regulations, or provisions, as may be prescribed by the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Disqualification of Directors.

48. The office of the director shall be vacated—

If he holds any other office or place of profit under the Company;
if he becomes bankrupt or insolvent;
if he is concerned in or participates in the profits of any contract with the Company;
if he participates in the profits of any work done for the Company.

But the above rules shall be subject to the following exceptions:—that no director shall vacate his office by reason of his being a shareholder in any incorporated Company which has entered into contracts with or done any work for the Company of which he is director; nevertheless he shall not vote in respect of such contract or work; and, if he does so vote, his vote shall not be counted, and he shall incur a penalty, not exceeding five hundred rupees.

Rotation of Directors.

49. At the first ordinary meeting after the incorporation of the Company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

50. The one-third or other nearest number to retire during the first and second years ensuing the incorporation of the Company shall, unless the directors agree among themselves, be determined by ballot; in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

51. A retiring director shall be re-eligible.

52. The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

53. If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place, and, if at such adjourned meeting no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

54. The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

55. Any casual vacancy occuring in the Board of Directors may be filled up by the direcrors; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occured.

Proceedings of Directors.

56. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit, and determine the quorum necessary for the transaction of business; questions arising at any meeting shall be decided by a majority of votes; in case of an equality of votes, the chairman, in addition to his original vote, shall have a casting vote; a director may at any time summon a meeting of the directors.

57. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

58. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall,

in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

59. A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

60. A committee may meet and adjourn as they think proper: questions at any meeting shall be determined by a majority of votes of the members present; and in case of an equal division of votes, the chairman shall have a casting vote.

61. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

62. The directors shall cause minutes to be made in books provided for the purpose—

(1) of all appointments of officers made by the directors;

(2) of the names of the directors present at each meeting of directors and committes of directors;

(3) of all orders made by the directors and committees of directors; and

(4) of all resolutions and proceedings of meetings of the Company, and of the directors and committees of directors.

And any such minute as aforesaid if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof.

63. The Company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Dividends.

64. The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

65. The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the Company, may select.

66. The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the Company on account of calls or otherwise.

67. Notice of any dividend that may have been declared shall be given to each shareholder or sent by post or otherwise to his registered place of abode; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the Company.

68. No dividend shall bear interest as against the Company.

Accounts.

69. Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year made up to a date more than three months before such meeting.

70. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters; every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of

expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

71. A balance-sheet shall be made out in every year, and laid before the general meeting of the Company; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

72. A printed copy of such balance-sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

Audit.

73. The accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors to be elected by the Company in general meeting.

74. If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

75. The auditors need not be shareholders in the Company; no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

76. The election of auditors shall be made by the Company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

77. The remuneration of the auditors shall be fixed by the Company at the time of their election.

78. Any auditor shall be re-eligible on his quitting office.

79. If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

80. If no election of auditors is made in manner aforesaid, the Local Government may, on the application of one-fifth in number of the shareholders of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

81. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

82. Every auditor shall have a list delivered to him of all books kept by the Company, and he shall at all reasonable times have access to the books and accounts of the Company; he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the Company.

83. The auditors shall make a report to the shareholders upon the balance-sheet and accounts; and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs; and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

84. Notices requiring to be served by the Company upon the shareholders may be served either personally, or by leaving the same, or sending them through the post in a letter addressed to the shareholders, at their registered places of abode.

85. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders, and notice so given shall be sufficient notice to all the proprietors of such share.

APPENDIX E.

NOTIFICATIONS AND RULES MADE BY THE GOVERNOR GENERAL IN COUNCIL UNDER THE INDIAN COMPANIES ACT, 1913.

Fee for registration of Association not for Profit.

[*See s.* 26]

No. 3991-*S. R., Dated the* 20*th July,* 1888[1].—The Governor General in Council is pleased to direct that the fee to be paid under section 40[2], of the Indian Companies Act, 1882 and Table C[3], in the first Schedule to that Act, for the registration of an association not for profit as a company with limited liability under section 26[4], of the said Act, shall, when the number of members is stated in the articles of association to exceed twenty or to be unlimited, be fifty rupees.

[*See Gazette of India,* 1888, *Pt.* 1. *p.* 341.]

NOTIFICATION

(COMPANY LAW)

No. 40 (1)/-Tr.(C.L.)/41.—In pursuance of section 249 of the Indian Companies Act, 1913 (VII of 1913), and in suppression of the notification of the Government of India in the Department of Commerce No. 23 (12)/A-Tr.(C.L.)/37 dated 22nd February, 1941 the Central Government is pleased to direct that the fees payable in respect of the matters specified in items 6 and 8 of Parts I and II respectively of Table B in the First Schedule to the said Act shall be rupees three.

[*See Gazette of India dated* 23*rd August,* 1941, *Part I, p.* 1194].

THE INDIAN COMPANIES RULES, 1941.

[AS AMENDED BY SUBSEQUENT NOTIFICATIONS]

[*See section* 151].

No. 23 (12)/B-Tr.(C.L.)/37.—In exercise of the powers conferred by section 151 of the Indian Companies Act, 1913 (VII of 1913), the Central Government is pleased to make the following rules, namely :—

THE INDIAN COMPANIES RULES, 1941.

1. *Short title "extent", commencement and repeal.*—(1) These rules may be called the Indian Companies Rules, 1941.

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[1] This notification was issued under the Indian Companies Act, 1882 (Act VI of 1882) which was repealed by the Indian Companies Act, 1913 (Act VII of 1913), and is kept in force by s. 24 of the General Clauses Act, 1897 (Act X of 1897).

[2] This corresponds to s. 249 of Act VII of 1913.

[3] This corresponds to Table B, II of Act VII of 1913.

[4] This corresponds to s. 26 of Act VII of 1913.

"(2) They extend to the whole of British India including Berar, and every reference therein to British India shall be considered as including a reference to Berar."

(3) They shall come into force on the 1st day of April 1941.

(4) The Indian Companies Rules, 1914, are hereby cancelled :

Provided that the cancellation shall not affect the validity of anything done under or in pursuance of the said Rules, and in particular, shall not be deemed to require the re-making of any instrument in the appropriate form prescribed by these rules.

[*Note.—In the heading to this Rule after "title" the word "extent" has been inserted, sub-rules (2) and (3) have been re-numbered as sub-rules (3) and (4) respectively and the new sub-rule (2) has been inserted (see Gazette of India dated 23rd August, 1941, Part I, p. 1194)*].

2. (1) In these rules, the "Act" means the Indian Companies Act, 1913 (VII of 1913).

(2) For the purposes of these rules, the Registrar shall be the sole authority to decide whether an officer of a company is a "responsible Officer of the Company" or not.

3. *Verification of copies of contracts under section 104.*—Copies of contracts required to be filed with the Registrar under section 104 of the Act shall be verified—

(i) by an affidavit of a responsible officer of the Company that they are true copies, or

(ii) by certification of public officers under section 76 of the Indian Evidence Act, 1872 (I of 1872).

4. *Verification of copies under sections 109, 109A and 110.*—A copy of an instrument or deed filed with the Registrar for registration under section 109, section 109A or section 110 of the Act shall be verified :—

(i) where the mortgage or charge comprises solely property situate outside British India, by a certificate under the seal of the Company or under the hand of some person interested therein otherwise than on behalf of the Company, that it is a true copy ;

(ii) in other cases, by an affidavit of a responsible officer of the Company that it is a true copy or by a certificate of a public officer under section 76 of the Indian Evidence Act, 1872 (I of 1872).

5. *Manner of giving notice under section 153B.*—The notice required by section 153B of the Act to be given by the transferee company shall be given to the dissenting shareholder either personally, or by sending it by registered post to his address registered in the books of the transferor company, or (if he has no address within British India so registered) to the address, if any, within British India supplied by him to the transferor company for the giving of notice to him. "If the dissentient shareholder has no registered address in British India and has not supplied to the transferor company an address within British India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company

shall be deemed to be duly given to him on the day on which the advertisement appears."

[*Note.—In Rule 5 after the words "notice to him," the matter within quotation marks has been added by Notification No. 23 (10)—Tr. (C.L.)/41 dated 19th April 1941] (See Gazette of India dated 19th April, 1941, Part I, p. 565)*].

6. *Certification of documents under section 277 of the Act.*—A copy of a document required to be certified under sub-section (1) of section 277 of the Act shall—

(i) in the case of a Company incorporated in a country outside His Majesty's dominions, be

(a) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vict., c. 10), or in any Act amending the same, or

(b) by a Notary of such country, the certificate of the Notary being authenticated by any of the British officials as aforesaid, or

(c) by some officer of the company before a person having authority to administer an oath as provided by Section 3 of the said Oaths Act, the status of the person administering the oath being authenticated by any of the British officials as aforesaid ; and

(ii) in the case of a Company incorporated in any part of His Majesty's dominions,

(a) be duly certified as a true copy by an official of the Government to whose custody the original is committed, or

(b) by a Notary Public of such place, or

(c) on oath by an officer of the Company before a person having authority to administer an oath in such place.

7. *Certification of translations under section 277 or section 277B.*—Translations of documents required to be filed with the Registrar under section 277 or section 277B of the Act shall be certified as correct translations,—

(i) where such translation is made outside of British India,

(a) by an official having custody of the original, or

(b) by a Notary Public of the country or place where the Company is incorporated :

Provided that where the Company is incorporated in a country outside His Majesty's dominions, the signature or seal of the person so certifying shall be authenticated by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vict., c 10), or in any Act amending the same ;

(ii) where such translation is made in British India—

(a) by an advocate, attorney or pleader entitled to appear before the High Court, or

(*b*) by an affidavit of some person having, in the opinion of the Registrar, a competent knowledge of the language of the original and of English.

8. *Power of Central Government to relax rules 6 and 7.*—The Central Government may in any particular case if it thinks fit and upon such conditions as it may impose, permit copies or translations not certified in accordance with rules 6 and 7 to be filed with the Registrar.

9. *Time for filing alteration of particulars under section 277.*—Notice of any alteration which is required by sub-section (1) of section 277 of the Act to be filed with the Registrar shall be filed within one month of the date on which the notice could in due course of post, and if despatched with due diligence, have been received by the Registrar from the place where the Company is incorporated.

10. *Translation of documents other than those under section 277.*—If any portion of any document required to be filed under any provision of the Act other than section 277 is not in the English language, a translation thereof, certified by a responsible officer of the Company to be correct, shall be furnished along with each copy deposited with the Registrar :

Provided that the Registrar may exempt any Company from the operation of this rule in respect of such documents as he may think fit.

11. *Forms.*—The forms set-forth in the Schedule hereto annexed or forms as near thereto as circumstances admit shall be used in all matters to which these forms relate.

12. *Payment of fees.*—All fees payable under the Act shall be paid in cash.

THE SCHEDULE.

FORM I.

Declaration on registration of Company.

THE INDIAN COMPANIES ACT, 1913.

[See Section 24.

Filing Fee Rs. 3.

Name of company..

Declaration of compliance with the requirements of the Indian Companies Act, 1913, made pursuant to section 24(2) on behalf of a company proposed to be registered as the..

Presented for filing by..

I..of..
do solemnly and sincerely declare that I am an Advocate*/Attorney/a Pleader entitled to appear before a High Court who is engaged in the formation of the company/a person named in the Articles as a Director/Manager/Secretary of the..and that all the requirements of the Indian Companies Act, 1913, in respect of matters precedent to the registration of the said company and incidental thereto have been complied with, save only the payment of the fees and

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* Strike out the portion which does not spply.

sums payable on registration. And I make this solemn declaration conscientiously believing the same to be true.

Note.—The declaration need not be either—

(*a*) signed before a Magistrate or an Officer competent to administer oaths, or

(*b*) stamped as an Affidavit.

No. of Company. Filing Fee Rs. 3.

FORM II.

Notice of the situation of the office where a British Register is kept or of any change in, or discontinuance of, any such office.

THE INDIAN COMPANIES ACT, 1913.

[See Section 41.]

Name of company..

Presented for filing by..

To the Registrar of Joint Stock Companies,...

....Limited hereby gives you notice in accordance with section 41 of the Indian Companies Act, 1913, and by the authority of (*a*) a special resolution of the company, duly passed on the...................day of............../clause ....of the company's articles of association that a branch register is now kept at (*a*).. /in lieu of............................../kept at... /is discontinued.

Signature

Designation

(State whether Director or Manager or Secretary).

Dated this......day of...........19......

No. of Company. Filing Fee Rs. 3.

FORM III.

Notice of consolidation, division, sub-division, or conversion into stock of shares, specifying the shares so consolidated, divided, sub-divided, or converted into stock, or of the re-conversion into shares of stock, specifying the stock so re-converted, or of the cancellation of shares (otherwise than in connection with a reduction of share capital under section 55 of the Indian companies Act, 1913).

THE INDIAN COMPANIES ACT, 1913.

[See Sections 50/51.]

Name of company..

Presented for filing by..

To the Registrar of Joint Stock Companies,...

....Limited,

(*a*) Strike out the portion which does not apply.

hereby give you notice in accordance with section 50/51 of the Indian Companies Act 1913, that—

*(I) .... shares of Rs.................each (........................ ....) have been consolidated and divided into ....shares of Rs..................each (of larger amount than the shares consolidated) (............................ ....) (Sections 50 and 51).

*(II) ....shares of Rs.................each (..................... ....) on which Rs..................per share is paid up/ have been sub-divided into..............................shares of Rs..................(of smaller amount than the shares sub-divided) (.....................................) on which Rs............ per share is paid up (which must be proportionate to the reduced nominal value of each share). (Section 50).

*(III) ....Fully paid shares of Rs..............each, numbered ....to.............., have been converted into stock.

*(IV) Rs..............of stock has been re-converted into.............. fully paid shares of Rs...............each, numbered.............. to.....................(Sections 50 and 51).

*(V) ....shares of Rs...............each, being unissued capital, have been cancelled, and the amount of the authorised capital has been correspondingly diminished (Section 50).

Signature

Designation

(State whether Director or Manager or Secretary).

Dated this......................day of.................19..............

No. of Company.

FORM IV.

Notice of increase in share capital.

THE INDIAN COMPANIES ACT, 1913.

[See Section 53.]

Filing Fee...........Difference between Fee payable on Capital as increased and Fee already paid.

Name of company...

Presented for filing by...

To the Registrar of Joint Stock Companies,...............................

....Limited, hereby gives you notice pursuant to Section 53 of the Indian Companies Act, 1913 that by (*a*)........................resolution of the company dated the.............day of.............19........, the share capital of the company has been increased by the addition thereto of the sum of Rs.......... beyond the registered capital of Rs...................................

---

* A separate notice for each item is to be given. Strike out the items which do not apply.

(*a*) "ordinary", "extraordinary" or "special".

The additional capital is divided as follows :—

Number of Shares.	Class of Shares.	Nominal Amount of each Share

The conditions (*e.g.*, voting rights, dividends, etc.) subject to which the new shares have been or are to be issued are as follows :—

(If any of the new shares are preference shares state whether they are redeemable or not).

Signature

Designation

(State whether Director or Manager or Secretary.)

Dated the..............day of..............19..............

No. of Company.

FORM V.

Notice of increase in number of members.

THE INDIAN COMPANIES ACT, 1913.

(See Section 53).

Filing Fee...........Difference between Fee payable on the Number as increased and Fee already paid.

Name of company..

Presented for filing by..

Notice of increase in the number of members of..............................

To the Registrar of Joint Stock Companies,..

....Limited, gives you notice, pursuant to Section 53 of the Indian Companies Act, 1913, that by (*a*)...........resolution of the company dated the.............. day of..............19........., the number of members in the company has been increased by the addition thereto of.............members beyond the present registered number of.........................

Signature

Designation

(State whether Director or Manager or Secretary.)

Dated the...........day of...........19...........

(*a*) "ordinary", "extraordinary" or "special".

No. of Company.

Filing Fee Rs. 3

FORM VI.

Notice of situation of registered office or of any change therein.

THE INDIAN COMPANIES ACT, 1913.

[See Section 72].

Name of company...

Presented for filing by...

To the Registrar of Joint Stock Companies,...

.... Limited, hereby gives you notice, in accordance with section 72 of the Indian Companies Act, 1913, that the registered office of the company (*a*) is situated at...

/was removed from...

to...

on the...............................19...........

Signature

Designation

(State whether Director or Manager or Secretary.)

Dated the..............day of..............19...........

FORM VII.

Statutory Report.

THE INDIAN COMPANIES ACT, 1913.

[See Section 77.]

Filing fee Rs. 3

Name of Company...

Statutory Report of the..Limited, certified and filed pursuant to section 77(5)

Date and place of the statutory meeting...

Presented for filing by...

The Directors report to the members as follows :—

1. Shares allotted up to...........day of...........last (*i.e.* a date within 7 days of the report) and cash received up to the aforesaid date were :—

Particulars.		Number of Shares.	Nominal Value of each Share.	Cash Received.
(*a*) Allotted subject to payment therefor in Cash.	Preference* Ordinary Deferred			

N. B. (Form VI).—This notice must be filed with the registrar within 28 days of incorporation or of the change, as the case may be.

(*a*) Strike out the portion which does not apply.

* Redeemable Preference Shares are to be specified in all cases.

Particulars.		Number of Shares.	Nominal Value of each Share.	Cash Received.
(b) Allotted as fully paid up otherwise than in cash, the consideration for which they have been so allotted being :—	Preference*			*Nil*
	Ordinary .			*Nil*
	Deferred .			*Nil*
(c) Allotted as partly paid up to the extent of Rs. per share, the consideration for which they have been so allotted being :—	Preference*			
	Ordinary .			
	Deferred .			
(d) Allotted at a discount of Rs.............per Share	Preference*			
	Ordinary .			
	Deferred .			
	Total .			

2. The receipts and payment of the Company up to the aforesaid date are as follows :—

Receipts.	Rs.	Payments.	Rs.
Shares—		Preliminary Expenses . .	
Preference		Commission of Sale of Shares .	
Ordinary		Discount on Shares . .	
Deferred		Capital Expenditure—	
Share Deposits		Land	
Debentures		Buildings	
Loans		Plants	
Deposits		Machinery	
Other Sources (to be specified) .		Dead Stock	
		Etc.	
		Other Items (to be specified) .	
		Balances—	
		In hand	
		At Banks	
Total ...		Total ...	

3. Preliminary Expenses as estimated in the Prospectus† or Statement in lieu of Prospectus Rs..

Preliminiary Expenses incurred up to the aforesaid date :—

Law Charges
Printing
Registration
Advertisement
Commission on sale of Shares
Discount on Shares.
Other initial Expenses

Total Rs.

---

* Redeemable Preference Shares are to be specified in all cases.

† Strike out the portion which does not apply.

4. Names, addresses and descriptions of the Directors, Auditors (if any) Managing Agents and Managers (if any) and Secretary of the Company and the changes, if any, which have occurred since the date of the incorporation :

Directors.

Name.	Address.	Description.	Particulars of changes, if any.**

Auditors.

Name.	Address.	Description.	Particulars of changes, if any.**

Managing Agent and Managers.

Name.	Address.	Description.	Particulars of changes, if any**.

Secretary.

Name.	Address.	Description.	Particulars of changes, if any.**

**These particulars must include dates of changes.

5. Particulars of any contract the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

6. The extent to which underwriting contracts if any, have been carried out.

7. The arrears, if any, due on calls from directors, managing agents and managers.

8. The particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, managing agent or, manager or if the managing agent is a firm, to any partner thereof, or, if the managing agent is a private company, to any director thereof.

Dated this............day of............19.........

We hereby certify this report.*

(Alternatively)

I hereby certify this report.

Two or more Directors.

Chairman of the Directors.

(If authorised by the Board of Directors).

We hereby certify that so much of the report as relates to the shares allotted by the Company and to the cash received in respect of such shares and to the receipts and payments of the Company is correct.

Auditors.

Dated this...................day of............19......

Note.—1. Receipts and payments account given in para. (2) of the Statutory Report with reference to section 77(3) (c) of the Indian Companies Act should be prepared up to a date within 7 days of the date of the report and the figures and particulars required under all the other items of the Statutory Report should also be given as on the same date, *i.e.*, the date upto which the receipts and payments account is prepared.

2. This form should contain the actual signatures of the persons who have signed the report, *viz.* the Directors or the Chairman and the Auditor.

*To be certified by not less than two Directors or if the Company has less than two Directors, by the sole Director, and forwarded at least twentyone days before the statutory meeting to every member and debenture-holder of the Company and to be filed with the Registrar forthwith after it is forwarded *vide* Section 77, sub-sections (2), (3) and (5), and section 146.

FORM VIII.

Special Resolution/Extraordinary Resolution* of the

....Company, Limited.

THE INDIAN COMPANIES ACT, 1913.

[See Section 82 (1).]

Filing Fee Rs. 3.

Date of despatch of notice specifying the intention to propose the resolution as a Special Resolution/Extraordinary Resolution.*

Passed..............................., 19.........

Name of Company..

Presented for filing by..

To the Registrar of Joint Stock Companies,......................................

At a general meeting of the members of the said company, duly convened and held at..................................in the town of.................. on the............day of......................., 19........., the following special resolution/extraordinary resolution........................was duly passed.

Resolved.......................................that.................................

....

....

....

....

Signature..................................

Designation...............................

(State whether Director, Manager, Secretary or other Officer of the Company.)

Dated this.....................day of...................................., 19.........

FORM IX.

Consent of Director to act.

THE INDIAN COMPANIES ACT, 1913.

[See Section 84.]

Filing fee Rs. 3.

Name of Company..

Consent to act as Director/Directors of the....................................... to be signed and filed pursuant to section 84 (*1*) (*i*)...

Note (Form VIII).—To be printed or typewritten and duly certified under the signature of an officer of the company and filed with the registrar within 15 days from the passing of the resolution.

* Strike out the portion which does not apply. A separate notice is to be given for a special resolution and for an extra-ordinary resolution.

Presented for filing by..

To the Registrar of Joint Stock Companies,........................

I/We, the undersigned, hereby testify my/our consent to act as Director/Directors of the...
pursuant to section 84(1) (i) of the Indian Companies Act, 1913.

Signature.	Address.	Description.

Dated this.........day of..............19......

FORM X.

List of persons consenting to be Directors.

THE INDIAN COMPANIES ACT, 1913.

[See Section 84.]

Filing fee Rs. 3.

Name of Company...

List of the persons who have consented to be Directors of the________ to be filed with the Registrar pursuant to section 84(2).

Presented for filing by..

To the Registrar of Joint Stock Companies,...

I/We, the undersigned, hereby give you notice, pursuant to section 84(2) of the Indian Companies Act, 1913, that the following persons have consented to be Directors of the...
....

Name.	Address.	Description.

Signature, address and description
of applicant for registration.

Dated this . . . . day of . . . . 19 . . . . .

Notes (Form IX).—(1) If a Director signs by "his agent authorised in writing", the authority must be produced and a copy attached.

(2) Section 84 (3) of the Indian Companies Act, 1913, provides that—

"This section shall not apply to a private company or a company which was a private company before becoming a public company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business."

FORM XI.

Agreement to take qualification shares in proposed company.

THE INDIAN COMPANIES ACT, 1913.

(See Section 84.)

Filing fee Rs. 3.

Contract by directors to take and pay for qualification shares in...Limited to be signed and filed pursuant to section 84 (1) (*ii*) of the Indian Companies Act, 1913.

Presented for filing by..

We, the undersigned, having consented to act as directors of the.., Limited, do each hereby agree to take from the said company and pay for the..............................shares of.............................each, being the number of shares prescribed as the qualification for the office of Director of the said company.

Signature.	Address.	Description.

Dated...............................

Witness to the above signatures ......

Address ....

FORM XII.

Particulars of Directors, Managers and Managing Agents and of any changes therein.

THE INDIAN COMPANIES ACT, 1913.

[See Section 87.]

Filing Fee Rs. 3.

Name of Company..

Presented for filing by...

The present Christian Name or names and surname (*a*) (*d*).	Any former Christian Name or names or surname.	Nationality.	Nationality of origin (if other than the present Nationality).	Usual residential address.	Other business occupation and Directorships if any. If none state so(*b*).	Date of appointment or change.	Changes. (*c*)

Signature.

Designation.

[State whether Director, Manager or Managing Agent(s).]

Dated the............day of.............194 .

FORM XIII.

Declaration before commencing business in case of Company issuing a Prospectus.

THE INDIAN COMPANIES ACT, 1913.

[See Section 103.]

Filing fee Rs. 3.

Name of company..

Declaration that the conditions of section 103 of Act have been complied with.

Presented for filing by...

I...................................of...

being the Secretary/a Director of the...............................do solemnly and sincerely declare :—

That the amount of the share capital of the company offered to the public for subscription is Rs. ....

(*a*) In the case of a corporation its corporate name and registered or principal office should be shown.

(*b*) The individuals' primary business, occupation and particulars of all other directorships held by him must be entered.

(*c*) Particulars of change among Directors, Managers or Managing Directors should be sent to the Registrar. A note of the changes since the last list should be made in this column, e.g. by placing against a new Director's name the words "in place of............................" and by writing against any former director's name change caused by death/resignation/retirement/removal/rotation/disqualification.

(*d*) In the case of a firm the full name, address and nationality of each partner and the date on which each became a partner.

That the amount stated in the prospectus as the minimum amount which in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matter specified in sub-section (2) of section 101 of the Indian Companies Act, 1913, is Rs. ....

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of Rs. ....

That every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription.

I declare that the foregoing statements are true to my knowledge and belief.

Signature..............

Date.................

FORM XIV.

Declaration before commencing business in case of Company filing statement in lieu of prospectus.

THE INDIAN COMPANIES ACT, 1913.

[See Section 103.]

Filing fee Rs. 3.

Name of company...

Declaration that the conditions of section 103 of the Act have been complied with.

Presented for filing by...

I.......................................of......................being the *Secretary/a Director of............................do solemnly and sincerely declare :—

That the amount of the share capital of the company subject to the payment of the whole amount thereof in cash is Rs............................

That the company being one which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the Registrar a statement in lieu of prospectus.

That the amount fixed by the Memorandum or Articles and named in the statement as the minimum subscription upon which the Directors may proceed to allotment is Rs............

Notes.—(1) The declaration need not be—

(*a*) signed before a Magistrate or an officer competent to administer oaths; or

(*b*) stamped as an affidavit.

(2) Section 103 (6) of the Indian Companies Act, 1913 Provides that—

"Nothing in this section shall apply to a private company, or to a company registered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares or, in so far as its provision relate to shares, to a company limited by guarantee and not having a share capital."

(3) For further restrictions on commencement of business by Banking Companies, *vide* section 277-I of the Indian Companies Act.

*Strike out the portion which does not apply.

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of Rs...........

That every Director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash.

I declare that the foregoing statements are true to my knowledge and belief.

Signature.............................

Dated this...........day of.................19.........

FORM XV.

Return of Allotments.

THE INDIAN COMPANIES ACT, 1913.

[See Section 104.]

Filing Fee (See Note 2, next page).

Name of company...

Return of allotments of the... made on the following date/dates*...............................filed with the registrar pursuant to section 104 (1).

Presented for filing by...

1. **Shares allotted payable in cash :—

No.	Nominal Amount.	Due and Payable—Called up *per Share* (including Application and Allotment.)	Paid up (excluding Premiums on Shares and Calls in Advance).	
			Per Share.	Total.
1	2	3	4	5

2. **Shares allotted for a consideration other than Cash :—

Number...............................

Nominal Amount.................Rs.

Amount to be treated as paid up on each share.........Rs.

Notes.—(1) The declaration need not be—
(*a*) signed before a Magistrate or an officer competent to administer oaths; or
(*b*) stamped as an affidavit.

(2) For further restrictions on commencement of business by Banking Companies, *vide* Section 277-I of the Indian Companies Act.

*Insert date or dates of the allotments.

The consideration for which such shares have been allotted is as follows :—

Property and Assets acquired.................Rs.
(Description)

Goodwill of....................Rs.

Services (give nature of services)...........Rs.

Other Items (to be specified)................Rs.

3. *Number of shares issued at a discount (*Vide* Section 105-A).........

Nominal amount of the shares so issued..

Amount of discount per share..

Paid up per share..

Names, addresses, and descriptions of the allottees.

Date of allotment.	Name in full.	Address.	Description.	Number of shares allotted.		
				Preference.	Ordinary.	Other kinds.

Dated this...........day of....................19........

Signature.............................

Designation..........................

(State whether Director, Manager, Managing Agent or Secretary).

---

*Distinguish between preference, ordinary, or other description of shares, specifying Redeemable Preference Shares if any, in all cases.

Note 1.—In making a return of allotments under section 104 (1) of the Indian Companies Act, 1913, it is to be noted that :—

When a return includes several allotments made on different dates, the actual dates of all such allotments should be entered at the top of the front page, and the registration of the return should be effected within the month of the first date.

Note 2.—The filing fee is payable according to the following Scale—*Vide* Government of India, Department of Commerce Notification No. 426-T. (2), dated the 11th September 1926 :—

	Rs.	A.	P.
Where the paid-up value of the shares allotted does not exceed Rs. 25	0	4	0
Where the paid-up value of the shares allotted exceeds Rs. 25, but does not exceed Rs. 50	0	8	0
Where the paid-up value of the shares allotted exceeds Rs. 50, but does not exceed Rs. 75	0	12	0
Where the paid-up value of the shares allotted exceeds Rs. 75, but does not exceeds Rs. 100	1	0	0
Where the paid-up value of the shares allotted exceeds Rs. 100	3	0	0

FORM XVI.

Particulars of Oral Contracts.

THE INDIAN COMPANIES ACT, 1913.

[Pursuant to Section 104 (2).]

Filing fee Rs. 3.

Name of company...

The particulars must be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.

Presented for filing by...

Particulars of contract relating to shares allotted as fully or partly paid up otherwise than in cash by.......................................Limited.

(1) The number of shares allotted as fully or partly paid up otherwise than in cash.	
(2) The nominal amount of each such share.	Rs.
(3) The amount to be considered as paid up on each such share otherwise than in cash.	Rs.
(4) If the consideration for the allotments of such shares is services, or any consideration other than that mentioned below in part 5, state the nature of such consideration, and the number of shares so allotted.	No. of shares.............................. Details of consideration.............

(5) If the allotment is made in satisfaction or part satisfaction of the purchase price of property, give a brief description of such property, and full particulars of the manner in which the purchase price is to be satisfied.

(1) Brief description of property.	
(2) Purchase Price	Rs.
(*i*) Total amount considered as paid on...............shares allotted otherwise than in cash	Rs.
(*ii*) Debentures issued	Rs.
(*iii*) Cash	Rs.
(*iv*) Amount of debt released or liabilities assumed by the purchaser (including mortgages on property acquired)	Rs.
Total purchase price	Rs.

(6) Give full particulars, in the form of the following table, of the property which is the subject of the sale, showing in detail how the total purchase price is apportioned between the respective heads :—

	Rs.	A.	P.
Legal Estates in Freehold Property and Fixed Plant and Machinery and other fixtures thereon (*a*)			
Legal Estates in Leasehold Property (*a*)			

(*a*) Where such properties are sold subject to mortgage, the gross value should be shown.

	Rs. A. P.
Fixed Plant and Machinery on Leasehold Property (including Tenants' Trade and other Fixtures)	
Equitable Interests in Freehold or Leasehold Property *(a)* ...	
Loose Plant and Machinery, Stock-in-Trade, and other Chattels *(b)*	
Goodwill and Benefit of Contracts	
Patents, Designs, Trade Marks, Licences, Copyrights, etc. ...	
Book and other Debts.	
Cash in Hand and at Bank on Current Account, Bills, Notes, etc.	
Cash on Deposit at Bank or elsewhere	
Shares, Debentures and other investments	
Other Items (to be specified)	
	Rs.

Signature....................

Designation..............

(State whether Director or Manager or Secretary).

Dated the......day of..............19......

FORM XVII.

Statement as to commission where shares not offered to the public.

THE INDIAN COMPANIES ACT, 1913.

[See Section 105.]

Filing fee Rs. 3.

Name of company..

Presented for filing by..

Statement of the amount or rate per cent., of the commission payable in respect of shares and of the number of shares which persons have agreed for a commission to subscribe absolutely, or conditionally.

Name of company	
Articles of association authorising commission.........	Article No.
Particulars of the amount paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure, subscriptions for any shares in the company, or	Paid Rs. Payable Rs.
Rate of such commission	Rate per cent.
Date of circular or notice (if any), not being a prospectus, inviting subscriptions for the shares and disclosing the amount or rate of the commission	Date.
Number of shares which persons have agreed for a commission to subscribe absolutely	No.
Number of shares which persons have agreed for a commission to subscribe conditionally	No.

Signature of all the Directors or of their agents authorised in writing.

Dated this.........day of.................19.........

(a) Where such properties are sold subject to mortgage, the gross value should be shown.

(b) No plant and machinery which was not in an actual state of severance on the date of the Sale should be included under this head.

FORM XVIII.

Particulars of mortgages or charges.

THE INDIAN COMPANIES ACT, 1913.

[See Sections 109 and 277-D.]

Filing fee Rs. 3.

Name of Company...

Particulars to be filed with the registrar pursuant to section 109 of a mortgage or charge created by the..............................and being :—

(*a*) A mortgage or charge for the purpose of securing any issue of debentures ; or
(*b*) A mortgage or charge on uncalled share capital of the company ; or
(*c*) A mortgage or charge on any immoveable property wherever situate, or any interest therein ; or
(*d*) A mortgage or charge on any book debts of the company ; or
(*e*) A mortgage or a charge, not being a pledge on any movable property of the company except stock-in-trade ; or
(*f*) A floating charge on the undertaking or property of the company ;

(Strike out the sub-heads (*a*), (*b*), (*c*), (*d*), (*e*) or (*f*) which do not apply).

Presented for filing by...

Particulars of mortgage or charge created by the..............................

(1) Date of the instrument creating or evidencing the mortgage or charge and description thereof (*a*).

(2) Amount secured by the mortgage or charge (*b*).

(3) Short particulars of the property mortgaged or charged.

(4) Gist of the terms or conditions or extent or operation relating to any mortgage or charge.

(5) Names (with addresses and descriptions) of the mortgages or persons entitled to the charge.

(6) Amount or rate pet cent. of the commission, allowance or discount (if any).

Signature.................................

Designation...........................

[State whether Director, Manager or Secretary or Person authorised to accept service of process under Section 277 (1) (*d*).]

Dated this..............day of.......................19........

(*a*) A description of the instrument, *e.g.*, "Trust Deed," "Mortgage," "Debenture," etc., as the case may be, should be given.

(*b*) A definite figure is to be given.

FORM XIX.

Particulars of Modification of Mortgage or Charge.

THE INDIAN COMPANIES ACT, 1913.

[See Sections 116 (3) and 277D.]

Filing Fee Rs. 3.

Name of company……………………………………………………………

Presented for filing by……………………………………………………

Particulars. 1	According to original Instrument. 2	According to Modifying Instrument.* 3
1. Date and description of Instrument.		
2. Amount secured by the mortgage or charge.		
3. Brief particulars of property mortgaged.		
4. Gist of terms or conditions, or extent or operation of the mortgage or charge.		

Signature……………………………

Designation…………………………

[State whether Director, Manager or Secretary or person authorised to accept service of process under Section 277 (1)(*d*).]

Dated…………………………………

---

*In this column, particulars have to be given only when there is a variation from column 2.

Note.—Section 116 (3) of the Indian Companies Act, 1913, provides that :—

> Whenever the terms or conditions or extent or operation of any mortgage or charge registered under this section are modified, it shall be the duty of the company to send to the Registrar the particulars of such modification, and the provisions of this section as to registration of a mortgage or charge shall apply to such modification of the mortgage or charge as aforesaid.

FORM XX.

Particulars of a mortgage or charge subject to which property has been acquired on or after the 15th January 1937.

THE INDIAN COMPANIES ACT, 1913.

[See Sections 109A and 277D.]

Filing Fee Rs. 3.

Name of company............................ . ...

Presented by..

Particulars of a mortgage or charge subject to which property has been acquired on or after the 15th January 1937 by.................................. ....a company registered in British India/a company incorporated outside and having a place of business in British India.*

(1) Date and description of the instrument creating or evidencing the mortgage or charge (*a*).	
(2) Date of the acquisition of the property.	
(3) Amount owing on security of the mortgage or charge.	
(4) Short particulars of the property mortgaged or charged.	
(5) Gist of the terms or conditions or extent or operation relating to any mortgage or charge.	
(6) Names, addresses and descriptions of the mortgagees or persons entitled to the charge.	

(In the case of a company incorporated in British India)—

Signature..................................

Designation...............................

(State whether Director, Manager or Secretary.)

Dated this..............day of.......................19........

(In the case of a company established outside British India)—

Signature of any one or more of the persons authorised under Section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person authorised by the company. ....
....
....

Dated the..............day of...............................19........

---

* Strike off the portion which does not apply.

(*a*) description of the instrument, *e.g.*, "Trust deed," "Mortgage," "Debenture," etc., as the case may be, should be given.

Note.—A copy of the instrument, certified as prescribed in rule 4 of the Indian Companies Rules, 1941, must be delivered with these particulars.

FORM

Form of Register or mort

THE INDIAN COM

(See Sections 109,

Register or Mortgages and charges and of

Date of registration.	Serial number of document on file.	Date of creation of each mortgage or charge and description thereof ; or date of acquisition of property if acquired subject to mortgage or charge.	General description or short particulars of the property mortgaged or charged.	Gist of the terms or conditions or extent or operation relating to any mortgage or charge.	Names, addresses and description of the mortgagees or persons entitled to the charge or Trustees for the Debentures.	Amount secured by the mortgage or charge. (Other than debentures.)	Particulars relating to the issues of debentures of a series.				
							Total amount secured by a series of debentures.	Date and amounts of each issue of the series.		Dates of the resolutions authorising the issue of the series.	Date of the covering deed.
								Date.	Amount.		
1	2	3	4	5	6	7	8	9		10	11
						Rs.	Rs.		Rs.		

XXI.

gages and charges.

PANIES ACT, 1913.

109A, 112 and 121.)

*Memoranda of satisfaction of the*____________________

Amount or rate per cent. of the commission, allowance or discount.	Date of registration of modification.	Date and brief description of instrument of modifications.	Brief particulars of nature and extent of modifications.	Receiver.		Memorandum of satisfaction.	Date of satisfaction.
				Name, address and date of appointment.	Date of ceasing to act.		
12	13	14	15	16		17	18

FORM XXII.

Registration of Series of debentures.

THE INDIAN COMPANIES ACT, 1913.

[See Sections 110 and 277-D.]

Filing fee Rs. 3.

Name of company...

Particulars to be filed with the Registrar pursuant to section 110 relating to a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of the said series are entitled *pari passu* created by the............................

Presented for filing by...

(1) Total amount secured by the whole series . .

(2) Amount of the present issue of the series . .

(3) Dates of resolution authorising the issue of the series.

(4) Dates of the covering deed (if any) by which the security is created or defined; or if there is no such deed, the date of the first execution of any debenture of the series. (*a*)

(5) General description of the property charged .

(6) Gist of the terms or conditions or extent or operation relating to any mortgage or charge.

(7) Names and addresses of the trustees (if any) for the debenture-holders.

(8) Amount or rate per cent. of the commission, allowance or discount (if any).

Signature....................................

Designation..................................

(State whether Director, Manager or Secretary or person authorised to accept service of process under Section 277 (1)(*d*).]

Dated this...............day of..........................19.........

(*a*) A description of the instrument, *e.g.*, "Trust Deed," "Mortgage," "Debenture," etc., as the case may be should be given.

Note.—The deed, if any, or a copy thereof verified in accordance with Rule 4 of the Indian Companies Rules, 1941, containing the charge must be field with these particulars with the Registrar within twenty-one days after the execution of such deed; or, if there is no such deed, one of the debentures must be so delivered within twenty-one days after the execution of any debentures of the series.

FORM XXIII.

Registration when more than one issue of the same series.

THE INDIAN COMPANIES ACT, 1913.

[See Sections 110 and 277-D.]

Filing fee Rs. 3.

Name of company……………………………………………………………………

Statement of particulars as required by section 110 when more than one issue is made of debentures in a series.

Presented for filing by……………………………………………………………………

Particulars of an issue of debentures made by……………………………………

To be entered on the register pursuant to the proviso to section 110 of the Indian Companies Act, 1913.

(1) Date of present issue	
(2) Amount of present issue	
(3) Gist of the terms or conditions or extent or operation relating to any mortgage or charge.	
(4) Particulars as to the amount or rate per cent. of the commission, allowance, or discount (if any). (*a*)	
(5) Total amount covered by the whole series . .	
(6) Total amount of Issue, including the present issue .	

Signature……………………………………

Designation……………………………………

[State whether Director, Manager or Secretary or person authorised to accept service of process under Section 277 (1)(*d*).]

Dated this……………day of……………………19………

(*a*) The rate of interest payable under the terms of the Debentures should not be entered.

Note.—Section 110 of the Indian Companies Act, 1913, and the proviso thereunder provide :—

(1) For registration of particulars of the entire series (for which purpose Form No. XXII must be used), and

(2) When there is more than one issue of debentures of the series, for the registration of the amount and date of each issue after the first (for which purpose this Form No. XXIII must be used).

FORM XXIV.

Chronological Index of Charges entered in the Register.

THE INDIAN COMPANIES ACT, 1913.

(See Section 113.)

Serial number of charge in this index.	Date of Registration.	Name of company.	Number of company.	Amount of mortgage or charge.	Date of trust deed.	Debentures.		Other mortgages, etc.	By whom registered.	Names and addresses of mortgagees or trustees for debenture holders or other persons entitled to the charge.	Remarks.
						First issue.	Further issue.				
1	2	3	4	5	6		8	9		11	12
				Rs.							

FORM XXV.

Notice of appointment of a Receiver.

THE INDIAN COMPANIES ACT, 1913.

(See Section 118.)

Filing fee Rs. 3.

Notice pursuant to section 118 as to the appointment of a receiver.

The..Company..

Presented for filing by..

To the Registrar of Joint Stock Companies,..

I,..of...hereby give notice that :—

*(1) I have obtained an order of the†...............dated.................. for the appointment of Mr........................of...................... as receiver of the property of this company.

*(2) On the..............................day of...............................I appointed Mr......................................of............................as receiver of the property of this company under the powers contained in an instrument ‡ dated....................

Signature......................................

Dated the...............day of..........................19......

FORM XXVI

Abstract of Receiver's Accounts.

THE INDIAN COMPANIES ACT, 1913.

(See Section 119.)

(No filing fee payable.)

Name of company...

Presented for filing by...

Name and address of Receiver..

Date and description of instrument under which Receiver is appointed. { .... / .... }

Date of taking possession...

Period covered by the abstract . . { From.. / To... }

Notes.—This notice must be filed within 15 days of the order or of the appointment under the instrument. The penalty for default is a fine not exceeding Rs. 50 for every day during which the default continues.

* Of these two paragraphs strike out that which does not apply.

† Insert name of Court making the order.

‡ Describe fully the instrument under which appointment is made.

And further take notice that unless upon an application made to the Court by you the said (*a*)....................on or before the...........day of ....19......, being one month from the date of this notice the Court thinks fit to order otherwise, the said (*b*).........will be entitled and bound to acquire the (c)...........shares held by you in the said (*d*)......... on the terms of the above mentioned offer approved by the approving (*c*)...........shareholders in the said company.

Signature for (*b*).......................

Designation.............................

(State whether Director or Manager or Secretary.)

Dated the..............day of..............19......

No. of Company.

Filing fee Rs. 3.

FORM XXX.

Application by an existing company for registration as a limited Company.

THE INDIAN COMPANIES ACT, 1913.

(See Sections 253, 255, 256 and 257.)

Name of Company..

Presented for filing by...

Application by..................................Company, for registration as a limited company under the Indian Companies Act, 1913.

..................................Company, constituted by...........dated the ....day of.................desired to register itself as a company limited by.................shares/guarantee under the Indian Companies Act, 1913, by the name of.........................Company, Limited, and, for that purpose, delivers the undermentioned documents for registration under the said Act.

Signature............................

Designation..........................

(State whether Director or Manager or Secretary.)

Dated this..............day of..............19......

(*a*) Name and address of dissenting shareholder.

(*b*) Name of transferee company.

(*c*) If the offer is limited to a certain class or classes of shareholders insert particulars of the shares.

(*d*) Name of transferor company.

*DOCUMENTS DELIVERED FOR REGISTRATION WITH THE FOREGOING APPLICATION.

1. Copy of the..................constituting or regulating the company.
2. List of the members of the company made up to the.........day of ....19......
3. Statement showing the nominal capital of the company, etc.
4. List of the directors or other managers of the Company.
5. Copy of resolution of the company assenting to its registration as a limited company, and adding the word "Limited" to its name.
6. Declaration by (*a*).......................of the company, verifying the particulars set forth in the documents above mentioned.

No. of Company. No filing fee *vide* section 260.

FORM XXXI.

Application by an existing company for registration as an unlimited company.

THE INDIAN COMPANIES ACT, 1913.

(See Sections 253, 255, 256 and 257.)

Name of company...

To be used in the case of existing Companies desiring to be registered without limited liability.

Presented for filing by...

Application by.......................company.....................for registration as an unlimited company under the Indian Companies Act, 1913. ....company, constituted by.......................dated the ....day of.......................desired to register itself under the Indian Companies Act, 1913, and for that purpose delivers the under mentioned documents for registration under the said Act.

Signature......................................

Designation.............................

(State whether Director or Manager or Secretary.)

Dated the..............day of..........................19......

DOCUMENTS DELIVERED FOR REGISTRATION WITH THE FOREGOING APPLICATION.

1. Copy of the..................constituting or regulating the Company.
2. List of the members of the Company made up to the...........day of....................

(*a*) This Declaration to be by any two directors or other principal officers of the company.

*Documents 1, 2, 3, 5 and 6 are to be filed by an existing Joint Stock Company, while documents 1, 3, 4, 5 and 6 are to be filed by a company other than a Joint Stock Company.

3. Statement of the registered office of the company.
4. List of the directors or other managers of the company.
5. Copy of resolution of the company assenting to its Registration.
6. Declaration by (*a*)............................of the company verifying the particulars set forth in the documents above mentioned.

No. of Company. Filing Fee Rs. 3.

FORM XXXII.

Registration of an existing company as a limited company.

Copy of resolutions assenting to registration with limited liability.

THE INDIAN COMPANIES ACT, 1913.

(See Sections 253, 255 and 256.)

Name of company..

Presented for filing by..

Copy of resolutions passed at a general meeting of......................... company.................held on the...........day of......................19...... assenting to its being registered with limited liability.

(The resolutions to be written or printed here.)

Signature...............................

Designation.............................

(State whether Director or Manager or Secretary.)

No. of Company. Filing Fee Rs. 3.

FORM XXXIII.

Registration of an existing Company.

LIST OF MEMBERS.

THE INDIAN COMPANIES ACT, 1913.

(See Section 255.)

Name of company..

Presented for filing by..

List of members of..Limited made up to the (*b*).............day of..........................19......

(*a*) This declaration is to be by any two directors or other principal officers of the company.

(*b*) Not more than six clear days before delivery for registration.

Surname.	Christian Name.	Address.	Occupation.	Number of Shares, or Amount of Stock, held.	Distinctive Number of the Shares (if any).

(To be signed and dated at the end.)

Signature.......................................

Designation...................................

(State whether Director or Manager or Secretary.)

Dated this...............day of........................19......

FORM XXXIV.

Registration of an existing company as a limited company.

Statement of nominal capital, its division into shares, the number of shares taken and amount paid thereon, or the amount of stock of which it consists, also of the name and registered office of the company.

THE INDIAN COMPANIES ACT, 1913.

(See Sections 255 and 256.)

Filing fee Rs. 3.

Name of company..

Presented for filing by...

Amount of nominal capital	
Number of shares into which it is divided, and amount of each share.	
Number of shares taken up to the............day of ....,19.........(*a*).	
Amount paid on each share	
Amount of stock of which it consists . . .	
Name of the company	Limited.
Registered office	

(*a*) Note more than six clear days before delivery for registration.

If the company is intended to be registered as a company limited by guarantee............. The Resolution declaring the amount of the guarantee.	Resolved that each member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding Rs...............,

Signature........................... ....

Designation................................

(State whether Director or Manager or Secretary.)

Dated the...........day of..............19......

No. of Company.

Filing fee Rs. 3.

FORM XXXV.

Registration of an existing company.

Declaration Verifying Documents Delivered to the Registrar of Companies with Application for Registration.

THE INDIAN COMPANIES ACT, 1913.

(See Section 257.)

Name of company...

Presented for filing by...

We,.............................of.............................and..................of ....being two...........................of the................ of...........company.........................do solemnly and sincerely declare that the particulars set forth in the several documents accompanying this declaration, and marked respectively with the letters..............are true; And we make this solemn declaration conscientiously believing the same to be true.

Directors/Principal Officers.

Note (Form XXXV).—(1) The declaration should be signed by two or more or other directors principal officers.

(2) No affidavit is required in respect of this form.

FORM XXXVI.

Documents (Charter, Statutes, or Memorandum and Articles of the Company, or Other Instrument) constituting or defining the constitution of the Company.

THE INDIAN COMPANIES ACT, 1913.

(See Section 277.)

Filing fee Rs. 5.

Name of Company..

Presented for filing by...

The...(name of company) incorporated in............................(country of origin), having a place of business in British India at..........................in the Province of..........................

Presents for filing, pursuant to section 277 (1)(*a*) of the Indian Companies Act, 1913, the following :—

1. *Charter/Statutes/Memorandum and articles of association/ ....(other instrument to be specified), constituting or defining the constitution of the company, and duly certified as required by the Indian Companies Rules, 1941. **
2. (If the aforesaid document is not written in the English language), a translation thereof, duly certified as required by the Indian Companies Rules, 1941.**

Signature or Signatures of any one or more of the persons authorised under Section 277 (1)(*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the company.	....

Dated this...........day of.......................19......

---

* Particulars of the documents required to be filed under Section 277 (1) of the Indian Companies Act, 1913 :—

(*a*) A certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof ;

(*b*) the full address of the registered or principal office of the company (see Form XXXVII) ;

(*c*) A list of the directors and managers (if any) of the company (see Form XXXVIII) ;

(*d*) The names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company.

N.B.—This Form, accompanied by the certified documents, and by the Forms XXXVII, XXXVIII, XXXIX and XLII must be filed within one month from the establishment of a place of business in the Province in British India.

**Certification of documents under section 277 of the Act.

6. *Certification of documents under section 277 of the Act.*—A copy of a document required to be certified under sub-section (1) of section 277 of the Act shall

(*i*) in the case of a Company incorporated in a country outside His Majesty's dominions, be

(*a*) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vict., c. 10) or in any Act amending the same, or

(*b*) by a Notary of such country, the certificate of the Notary being authenticated by any of the British officials as aforesaid, or

(*c*) by some officer of the company before a person having authority to administer an oath as provided by Section 3 of the said Oaths Act, the status of the person administering the oath being authenticated by any of the British officials as aforesaid ; and

(*ii*) in the case of a Company incorporated in any part of His Majesty's dominions,

(*a*) be duly certified as a true copy by an official of the Government to whose custody the original is committed, or

(*b*) by a Notary Public of such place, or

(*c*) on oath by an officer of the Company before a person having authority to administer an oath in such place.

7. *Certification of translations under section 277 or section 277B.*—Translations of documents required to be filed with the Registrar under section 277 or section 277B of the Act shall be certified as correct translations,—

(*i*) where such translation is made outside of British India,

(*a*) by an official having custody of the original, or

(*b*) by a Notary Public of the country or place where the Company is incorporated :

Provided that where the Company is incorporated in a country outside His Majesty's dominions, the signature or seal of the person so certifying shall be authenticated by any of the British officials mentioned in section 6 of the Commissioner's of Oaths Act, 1889 (52 and 53 Vict., c. 10), or in any Act amending the same ;

(*ii*) where such translation is made in British India—

(*a*) by an advocate, attorney or pleader entitled to appear before the High Court, or

(*b*) by an affidavit of some person having, in the opinion of the Registrar, a competent knowledge of the language of the original and of English.

FORM XXXVII.

Notice of Address of the Registered or Principal Office of the Company.

THE INDIAN COMPANIES ACT, 1913.

(See Section 277.)

Filing fee Rs. 5.

Name of company..

Presented for filing by..

Notice is hereby given, pursuant to section 277 (1) (*b*) of the Indian Companies Act, 1913, by the.. (name of company), incorporated in.. (country of origin) having a place of business in British India at............. ....in the Province of.......................... ....that the situation of the registered or principal Office of the company (in the country of origin) is :—

....

....

....

Signature or Signatures of any one or more of the persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the company.	....

Dated this...........day of..............19......

N. B.—This notice must be filed within one month from the establishment of a place of business in the Province in British India.

FORM XXXVIII.

Lists of directors and managers required by section 277.

THE INDIAN COMPANIES ACT, 1913.

(See section 277.)

Filing fee Rs. 5.

Name of company..

Return pursuant to section 277 (1) by—

The.......................................(name of Company) incorporated in......... ....(counting (country ?) of origin) and which has a place of business in British India at...of a list of its directors and managers.

Presented for filing by...

List of directors and managers of the...

Names of directors and managers.	Addresses of directors and managers.	Description or occupations of directors and managers.

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the Company. } ....
....

Date.

FORM XXXIX.

Return of persons authorised to accept service under section 277.

THE INDIAN COMPANIES ACT, 1913.

(See section 277.)

Filing fee Rs. 5.

Name of company..

Return pursuant to section 277 (1) by—

The....................................(name of Company) incorporated in ....(country of origin) which has a place of business in British India at...of the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company.

Presented for filing by..

List of persons authorised to accept service on behalf of the company.

Name of persons.	Residential Addresses.	Nationality.	Description or occupations.

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the Company. } ....
....

Date.

FORM XL.

Notice of alteration in Charter, etc., under section 277.

THE INDIAN COMPANIES ACT, 1913.

(See section 277.)

Filing fee Rs. 5.

Name of company..

Notice of alteration in the charter, statutes, memorandum and articles, or other instrument constituting or defining the constitution of the company.

Presented for filing by..

Notice is hereby given, pursuant to section 277 (1) of the Indian Companies Act, 1913, by the..............................(name of Company) incorporated in..................................(country of origin)................. and which has a place of business in British India at..............of alteration in the*.......................constituting or defining the constitution of the company.

Copy of alteration with copy of new deed, if one has been executed, and translation of alteration or any deed, if not in the English language, must accompany this notice and be shortly referred to here.

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the company.	....

Date

FORM XLI.

Notice of alteration in the address of the registered or principal office of the Company under section 277.

THE INDIAN COMPANIES ACT, 1913.

(See section 277.)

Filing fee Rs. 5.

Name of Company..

Presented for filing by..

Notice is hereby given, pursuant to section 277 (1) of the Indian Companies Act, 1913, by the.................................(name of Company) incorporated in..................................(country of origin) and which has a place of business in British India at......................of alteration in the address of the registered or principal office of the company (in the country of origin).

---

*Insert "charter", "statutes", "memorandum" or "articles" or other instrument as the case may be.

Note (Form XL).—This notice must be filed within one month after the date on which particulars of the alteration could, in due course of post and if despatched with due diligence, have been received in British India from the place where the company is incorporated.

Previous address.	Present address.	Date of change.

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other persons in British India duly authorised by the company.

....
....
....

No. of Company.

FORM XLII.

Notice of situation of the principal place of business in British India or of any change therein.

THE INDIAN COMPANIES ACT, 1913.

[See Section 2(?)277 (1) (*e*).]

Filing fee Rs. 5.

To

The REGISTRAR of JOINT STOCK COMPANIES,...........

The...Limited, incorporated in..an(d ?) having places of business in the Provinces of.................................. in British India, hereby give you notice, in accordance with clause (*e*) of sub-section (1) of section 277 that the office situated at..........................
....
in the Province of..shall be deemed to be the principal place of business of the company in British

Note (Form XLI).—This notice must be filed within one month after the date on which particulars of the alteration could, in due course, of post, and if, despatched with due diligence, have been received in British India from the place where the company is incorporated.

India* [instead of.. (in the case of a change of address).]

Signature of any one or more of the persons authorised under Section 277 (1) *(d)* of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the company.
....
....
....
....
....

Dated this............day of............, 19.....

FORM XLIII.

Notice of alterations of Directors or Managers.

THE INDIAN COMPANIES ACT, 1913.

(See Section 277.)

Filing fee Rs. 5.

Notice of alteration in the list of Directors or Managers of the.......... ....(name of Company)

Presented for filing by..

Notice is hereby given, pursuant to section 277 (1) of the Indian Companies Act, 1913, by the......................................(name of company) incorporated in............................(country of origin) and which has a place of business in British India at............................of alteration in the list of directors and managers.

Names of directors and managers.	Addresses of directors and managers.	Descriptions or occupations of directors and managers.	Remarks as to the alteration.

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the company.
....
....

Date

---

*Strike of the portion within the asterisks if not necessary.

Note (Form XLIII).—This notice must be filed within one month after the date on which particulars of the alteration could, in due course of post, and if despatched with due diligence, have been received in British India from the place where the Company is incorporated.

FORM XLIV.

Notice of alteration in the names of (or?) addresses of persons authorised to accept process.

THE INDIAN COMPANIES ACT, 1913.

(See Section 277.)

Filing fee Rs. 5.

Name of Company..

Notice of alteration in the names or addresses of the persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company.

Presented for filing by..

Notice is hereby given, pursuant to section 277 (1) of the Indian Companies Act, 1913, by the................................(name of Company) incorporated in.........................(country of origin), and which has a place of business in British India at..............of alteration in the names or addresses of the persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company.

Full names of Persons*	Residential Addresses.	Description or Occupation.	Alterations.	
			Date of alteration.	Particulars of alteration.

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the company.

....

....

....

Date

Note.—This notice must be filed within one month after the date on which particulars of the alteration could in due course of post, and if despatched with due diligence, have been received in British India from the place where the company is incorporated.

---

* A complete list must always be given.

FORM XLV.

Statement of affairs under section 277.

THE INDIAN COMPANIES ACT, 1913.

(See Section 277.)

Filing fee Rs. 5.

Name of Company..

Statement in the form of a balance sheet by the..(name of company)
Presented for filing by..
Return pursuant to section 277 (3) (*ii*) of the Indian Companies Act, 1913, by..

The.......................(name of Company) incorporated in..(country of origin) and which has a place of business in British India at....,..of a statement in the form of a balance sheet audited by the company's auditors*.................. and made up to..................................day of............................

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other persons in British India duly authorised by the company. } ....
....

Date

Note.—Section 277 (3) of the Indian Companies Act, 1913, is as follows :—

"(3) Every company to which this section applies shall in every year file with the Registrar of the Province in which the company has its principal place of business—

(*i*) in a case where by the law for the time being in force of the country in which the company is incorporated such company is required to file with the public authority an annual balance sheet—three copies of that balance sheet and if the balance sheet does not contain all the information provided for in the form marked H in the Third Schedule, such supplementary statements as shall furnish such information ; or

(*ii*) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated,—such a statement in the form of a balance sheet as such company would if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act :

The form of a balance sheet is prescribed in section 132 which is as follows :—

"(1) The balance sheet shall contain a summary of the property and assets and of the capital and liabilities of the company giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

(2) The balance sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit.

---

* Insert names and addresses of auditors.

FORM XLVI.

Additional declaration before commencing business in the case of a banking company.

THE INDIAN COMPANIES ACT, 1913.

(See Section 227-I.)

Filing fee Rs. 3.

Name of company..

Declaration that the conditions of Section 277-I of the Act have been complied with.

Presented for filing by...

We,*...

....

....

being the Directors and*...being the Manager of the.. do solemnly and sincerely declare (1) that shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital and that (2) a sum of Rupees..........................has actually been received by way of paid up capital.

(1)

(2)

(3)

(4)

(5)

Signatures of all the Directors.

Signature of Manager.

Dated this............day of...............19 .

---

*Names and addresses should be given.

Notes.—(1) This declaration should be verified by an affidavit signed by the directors and the Manager of the company in the form annexed.

(2) This form should be filed both by private and public banking companies.

ANNEXURE TO FORM XLVI.

(To bear a non-judicial stamp of the value of Rs. 2.)

IN THE MATTER OF THE INDIAN COMPANIES ACT, 1913.

AND

THE..LTD.

Affidavit verifying declaration under Section 277-I.

We,*..
....
being the Directors, and*...
being the Manager, of the above named company make oath (or solemnly affirm) and say as follows :—

That the declaration made by us under section 277-I of the Indian Companies Act, 1913, has been marked.........................

That the particulars contained in the said declaration are true to the best of our knowledge and belief.

(1)
(2)
(3)
(4)
(5)
Signatures of all the Directors.

....
Signature of Manager.

Sworn or solemnly affirmed at..........................
this.................only of...............................19 .
before me......................
Commissioner for Oaths.................................

No. of Company.

FORM XLVII.

Form of monthly statement of banking company.

THE INDIAN COMPANIES ACT, 1913.

(See Section 277-L.)

Filing fee Rs. 3.

Name of company...

Presented for filing by...

Statement for the month of..................................of the position of.., Ltd. as at the close of business on the following days of *the Month.*

---

*Names and addresses should be given.

(To be filed with the Registrar of Joint Stock Companies................ within the tenth day of the *next* month.)

	1st Friday *	2nd Friday *	3rd Friday *	4th Friday *	5th Friday *
I.—Demand Liabilities—					
II.—Time Liabilities—					
III.—Cash—†					
(*a*) Notes—					
(*b*) Rupees—					
(*c*) Subsidiary Coin—					

Signature............................

Designation..........................

Date......................................

(Director, Managing Director, Manager or Managing Agent).

REDUCTION OF FEES IN RESPECT OF CERTAIN MATTERS.

(*See s.* 249.)

No. 6161-26, *Dated the* 22nd *July*, 1916. In pursuance of section 249 of the Indian Companies Act, 1913 (VII of 1913), The Governor General in Council is pleased to direct that in place of the fees specified in items Nos. 5 and 7, respectively, of Parts I and II of Table B in the First Schedule of the said Act, the following reduced fees shall be paid to the registrar in respect of the matters hereinafter mentioned, namely :—

For filing returns of allotments prescribed by section 104 of the said Act in cases in which the aggregate paid up value of the shares allotted does not exceed Rs. 100, 1 per cent. on the paid up value of the shares allotted; in cases in which the paid up value exceeds Rs. 100, three rupees.

For filing any other documents required or authorised by the said Act or Rules made thereunder, other than the Memorandum or the abstract required to be filed with the Registrar by a receiver or the statement required to be filed with the Registrar by the liquidator in a winding up, three rupees.

(*See Gazette of India*—1916 *Pt.* 1, *p.* 997.)

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* Give dates (where Friday is a holiday under the Negotiable Instruments Act, the preceding working day).

† Cash must not include Balances at Bank or any item other than currency Notes, Rupees and subsidiary coins.

[*The above Rules and Forms were published in the Gazette of India dated* 22*nd February*, 1941 *Part I*, pp. 251 to 309].

APPENDIX F.

CALCUTTA HIGH COURT RULES, 1939.

(Came into force on 15th November, 1939.)

Original Side.

NOTIFICATION.

Calcutta, the 26th August, 1939.

With the approval of the Governor it is ordered by the High Court of Judicature at Fort William in Bengal that with effect from the 15th day of November, 1939, the existing Rules in Chapter XXXI and the forms in Appendix "K" of the Original Side Rules, 1914, be repealed and the following Rules and forms be substituted in their place :—

General.

Definitions.

1. In these Rules unless the context or subject-matter otherwise requires—

(*i*) "The Act" means the Indian Companies Act, 1913, as from time to time amended or modified.

(*ii*) "Advocate" means, in the High Court, a person entitled to appear and plead in the High Court in the exercise of its Original Jurisdiction, and includes, as regards proceedings in Chambers in the High Court, an attorney of the said Court, and as regards proceedings in a District Court any person entitled to appear and plead in such Court.

(*iii*) "Attorney" means in the High Court, an attorney of the High Court or firm of such attornies, and in a District Court, a legal practitioner or firm of legal practitioners entitled to appear and plead in such Court.

(*iv*) "Certified" means, in relation to a copy, certified as provided in section 76 of the Indian Evidence Act.

(*v*) "Company" means a company in respect of which proceedings to which these Rules apply have been instituted under the Act.

(*vi*) "Court" means the Court having jurisdiction under the Act.

(*vii*) "Creditor" includes a corporation and a firm of creditors in partnership.

(*viii*) "Filed" means filed in the office of the Registtrar.

(*ix*) "High Court" means the High Court of Judicature at Fort William in Bengal in its Original Jurisdiction.

(*x*) "Judge" means, in the High Court, a Judge exercising Original Jurisdiction, and in the District Court, the Judge of such Cout.

(*xi*) "Petition" in rules 51 to 64, both inclusive, means a petition to wind up a company by or under the supervision of the Court.

(*xii*) "Registrar" means, in the High Court, the Registrar of the Court in its Original Jurisdiction, and in a District Court, the Judge or such officer of such Court as may be authorised to perform such duties as are by these Rules assigned to the Registrar.

(*xiii*) "Sealed" means sealed with the seal of the Court.

(*xiv*) "These Rules" or "The Rules" means the Rules in this Chapter and includes the prescribed forms but not the marginal notes to such Rules.

Words importing the masculine gender shall include females.

Words in the plural shall include the singular and words in the singular shall include the plural.

The word "person" shall include any body of persons corporate or unincorporate.

Expressions referring to writing shall include printing, typing, lithography, photography, and other methods of representing or reproducing words in a visible form.

2. The following shall be used as general headings in all matters to which these Rules apply :—

A.—In proceedings before the Judge in Chambers or in Court :—

In the High Court of Judicature at Fort William in Bengal,
Original Civil Jurisdiction (or in the District Court of).

In the matter of the Indian Companies Act, VII of 1913,
and of , Limited.

B.—In all advertisements, notices and other proceedings not before the Judge in Chambers or in Court :

In the matter of the Indian Companies Act, VII of 1913,
and of , Limited.

3. In the High Court all petitions shall be presented and applications made to and proceedings taken before a Judge in Chambers, provided nevertheless that the Judge may adjourn any matter so brought before him into Court. In a District Court all petitions shall be presented, applications made to and proceedings taken under the direction of the Judge of such Court.

In Company matters such applications as are ordinarily dealt with in Chambers by the Registrar or Master, must be made to one of such officers. Only such applications in Chambers which can only be dealt with by a Judge, should be made to the Judge dealing with Company matters.

4. In the High Court the Rules of the Original Side of the High Court for the time being in force, and the general practice of the Court, including the course of procedure and practice in Chambers, shall apply as regards all proceedings under the Act in relation to companies so far as may be applicable, except and so far as by the Act or these Rules otherwise provided.

5. In the High Court (and in all Courts having jurisdiction under this Act) shall be kept and maintained a book called "the Register of Company Matters" in which shall be entered and numbered serially all applications made under sections 13, 15, 36, 38, 54, 55, 66A, 76, 79, 83, 87, 104, 105A, 120, 124, 125, 137, 141A, 153, 153A, 153B, 154, 166, 169, 171A, 173, 175, 177A, 177B, 178A, 179, 180, 181, 182, 208B, 208C, 208E, 209B, 209C, 209D, 209E, 209F, 209H, 213, 215, 216, 218, 221, 230A, 232, 235, 237, 241, 242, 243, 244A, 247, 249A, 277N, 280 and 281 and any other originating proceeding under the Act in relation to a company. The Register of Company matters shall have the following columns, namely:—

Column 1—Serial Number.
Column 2—Name of Company.
Column 3—Name of Applicants.
Column 4—Section of the Act, and Number of Rule, if any, under which application is made.
Column 5—Date of order.

6. All applications or orders made and all processes issued or documents filed thereafter in such proceedings shall bear the serial number thereof.

7. In the High Court and Courts having jurisdiction under the Act, there shall be kept and maintained a book called the "Ledger of Company Matters" in which shall be entered under separate headings for separate companies chronologically in order of date all documents filed in connection with applications made to the Court under the Act. Every document so recorded shall be serially numbered and shall bear the same number which shall be endorsed thereon in red ink at the time when such document is recorded.

8. Notwithstanding anything contained in these Rules, the Judge, before whom proceedings are taken, may enlarge or abridge the time for doing any act or taking any proceedings under these Rules.

9. Where an advertisement is required for any purpose, it shall, unless otherwise prescribed by these Rules or directed by the Judge, be inserted once in the *Calcutta "or Assam" Gazette* and once in two daily newspapers, one in the English language and one in the vernacular circulating "in the locality where the company has its registered office or a principal place of business or assets and liabilities as the case may be."

[Note.—*In this Rule the words "or Assam" have beeu iuserted and the words within the second quotation marks have been substituted for "Calcutta" with effect from 1st May, 1940. Vide Notification dated 19th April, 1940 in Calcutta Gazette dated 25th April, 1940, Part I, pp. 1286-87.*]

10. The Judge may except in the case of an application to wind up a company, in a special case dispense with any advertisement required by these Rules.

11. No proceedings under the Act or the Rules shall be invalidated by any formal defect or by any irregularity, unless the Judge before whom an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by an order.

12. The forms to which reference is made in and to be used under these Rules are those in the Appendix and the same where applicable, and where they are not applicable, forms of the like character with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or prolix forms shall be borne by or disallowed to the party using the same unless the Judge shall otherwise direct.

13. On the hearing of an application made under these Rules, the Judge may at the first hearing or at any subsequent stage make such order or orders, and give such direction as he may think fit as to the proceedings and more particularly with respect to the following matters, namely, the giving of notice to parties who are likely to be affected by the application and the mode and manner in which such notice is to be given.

14. Where an application is made on behalf of a company the verification of the petition or the affidavit as the case may be shall be affirmed by a director or some other principal officer of the company. The Judge before whom the application is made may for special reasons grant leave for the verification to be made by any person other than a director or other principal officer of the company.

Rectification of share register.

15. All applications for leave to rectify the share register must be made on notice to the company and in case of transfers of shares to the transferor or the transferee as the case may be.

Reduction of capital.

16. An application for an order confirming the reduction of the share capital of a company shall be made on petition verified by affidavit. Such petition shall be in Form No. 1.

17. An application for an order dispensing with the addition of the words "and Reduced" may be made *ex parte* at or after the presentation of such petition, provided the Judge may direct notice to be given of such application or adjourn the consideration thereof as he may think fit.

18. In a case where the creditors of a company are not entitled to object to the proposed reduction it shall not be necessary to obtain the certificate required by Rule 29 and on the presentation of the petition the Judge shall fix a day for the hearing thereof and shall give directions as to the advertisements to be published of the presentation of the petition, so that the first or only insertion of such notice shall be made not less than fourteen days before the date fixed for the hearing. Such notice shall be in Form No. 2.

19. In a case where the creditors are entitled to object to the proposed reduction application may be made *ex parte* by summons for directions as to the proceedings to be taken for settling the list of creditors entitled to object and for fixing the date with reference to which the list of such creditors is to be made out and the Judge may, either then or thereafter, give directions in respect of the matters mentioned in Rules 21, 23, 25 and 26. The order shall be in Form No. 3.

20. Proceedings under the order shall be continued by adjournment or if the Judge shall so direct, by further summons.

21. In a case where the creditors are entitled to object to the proposed reduction the company shall, within such time as the Judge shall direct, file a list containing the names and addresses of the creditors of the company at the date fixed under Rule 19 and stating the nature and amounts of the debts due to each of them respectively or in case of any debt payable on a contingency or not ascertained or of any claim admissible to proof in a winding up of the company, the value so far as can be justly estimated of such debt or claim. Such list shall be verified by the affidavit of an officer of the company competent to make the same. Such affidavit shall be in Form No. 4.

22. Copies of such list, containing the names and addresses of the creditors and the total amount due to them, but omitting the amounts due to them, respectively, or (if

the Judge shall think fit) complete copies of such list shall be kept at the registered office of the company and at the office of its attorney, and any person desirous of inspecting the same may, at any time during the usual hours of business inspect and take extracts from the same on payment of the sum of one rupee.

23. The company shall, within seven days after the filing of such affidavit, or such further time as the Judge may allow, send to each creditor whose name is entered in the said list, a notice stating the amount of the proposed reduction of the capital, and the amount or estimated value of the debt or claim for which such creditor is entered in the said list. Such notice shall be sent by prepaid letter post to each creditor at his last known address. Provided that where such address is not in British India, or is not known to the company, the Judge may direct notice to be given to such creditor in such manner as he may think fit. Such notice shall be in Form No. 5.

24. Notice of the filing of the list of creditors shall be advertised by the company in such manner as the Judge shall direct. Such notice shall be in Form No. 6.

25. A creditor entered in the said list who claims to be a creditor for a larger amount than that stated therein shall send his name and address and particulars of his debt or claim, and the name and address of his attorney (if any) to the attorney of the company, within the time stated in such notice being not more than fourteen days from the date of the notice or such further time as the Judge may allow.

26. The company shall, within such time as the Judge shall direct, file an affidavit made by its attorney verifying a list containing the names and addresses of persons (if any) who shall have sent in particulars of their debts or claims in pursuance of the notices prescribed by Rule 24 and the amounts of such debts or claims. A competent officer of the company shall join in such affidavit proving the despatch and publications of such notices and distinguishing in such list which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit shall be in Form No. 7.

27. Where any debt or claim, the particulars of which have been so sent, is not admitted by the company in full, then and in every such case, unless the company is willing to set apart and appropriate in such manner as the Judge shall direct the full amount of such debt or claim the company shall, where the Judge thinks fit so to direct, send to the creditor a notice that he is required to prove such debt or claim or such part thereof as is not admitted by the company, by affidavit by a day to be therein named being not less than fourteen days after such notice and being the time appointed by the Judge for adjudicating upon such debts and claims. Such notice shall be sent in the manner provided by Rule 23 and shall be in Form No. 8 and such affidavit in proof shall be in Form 9.

28. The costs of proof of a debt or claim in pursuance of the notice prescribed by Rule 27 shall be in the discretion of the Judge.

29. The result of the settlement of the list of creditors shall be stated in a certificate which shall be prepared by the attorney of the company and signed by the Judge. Such certificate shall (1) specify debts or claims (if any) which have been disallowed; (2) distinguish (*a*) debts or claims the full amount of which the company is willing to set apart and appropriate, (*b*) debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 59 of the Act, (*c*) debts or claims (if any) the full amount of which is not admitted by the company, and of which the company is not willing to set apart and appropriate the full amount or the amount of which has not been fixed by inquiry and adjudication as aforesaid; (3) show (*a*) which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them, (*b*) the total amount of the debts or claims the payment of which has been secured in manner provided by section 59 of the Act and the person to or by whom the same are due or claimed. It shall not be necessary to show in such certificate the several amounts of the debts or claims of any person who has consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid.

30. After the expiration of eight days from the filing of such last mentioned certificate, the petition shall be set down for hearing, by requisition addressed to the Registrar by the attorney of the company.

31. Notice of the day appointed for the petition to be heard shall, unless the Judge otherwise directs, be advertised in the same manner as the notice under Rule 25 so that the first or only advertisement shall be published not less than fourteen days before such day. Such notice shall be in Form No. 10.

32. Any creditor included in the said certificate whose debts or claims have not, before the hearing of the petition, been discharged or determined or been secured in manner provided by section 59 of the Act and who has not before the hearing consented to the proposed reduction of capital, may appear at the hearing of the petition and oppose the application. A creditor intending so to appear shall give two days' notice in writing of such intention to the attorney of the company and in default of such notice shall not without the leave of the Judge be entitled to appear. The costs of the appearance of a creditor shall be in the discretion of the Judge.

33. At the hearing of the petition the Judge may, if he think fit, give such directions as may seem proper with reference to the securing, in manner mentioned in section 59 of the Act, the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, if the Judge think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

34. Where the Judge makes an order confirming a reduction such order shall give directions as to the manner in which, in what newspapers and at what times notice of the registration of the order and of such minute as is mentioned in section 61 of the Act, shall be published and (unless the addition of the words "and Reduced" shall have been dispensed with altogether or shall be dispensed with thenceforth) shall ffx the date until which the words "and Reduced" are to be deemed part of the name of the company as provided in section 57 of the Act.

35. Where the Judge shall think fit to require the company to publish the reasons for the reduction of its capital, or any other information with regard thereto, or the causes which led to such reduction (as provided by section 65 of the Act) the same shall be advertised in such newspapers, in English and in the vernacular, as the Judge shall think fit.

Meetings held under directions of the Court.

36. Application by a shareholder for direction to call a general meeting of a company under the provisions of section 76 or section 79 of the Act shall be made by petition supported by affidavit.

37. An order made by the Court under section 76 or section 79 of the Act directing the calling of a general meeting of a company shall contain directions as to the time and place of the meeting and a copy of the said order shall be filed by the applicant with the Registrar of Joint Stock Companies before the meeting is held.

Issue of shares at a discount.

38. Unless in any particular case the Court shall otherwise direct every order sanctioning the issue of shares at a discount shall contain a direction that a certified copy of such order shall be delivered to the Registrar of Joint Stock Companies for registration within fifteen days of the making thereof or seven days from the date of the filing thereof whichever is later or within such further time as the Judge may allow and that no issuse of shares at a discount shall be made till such copy has been so delivered.

Applications by delinquent director or officer under section 141 (A).

39. An application by a director or manager or other officer of the company for leave to act as director or to take part in the management of the company under section 141A shall be made on notice to the company and the Advocate-General or the Public Prosecutor as the case may be.

Schemes of compromise or arrangement.

40. All applications for the sanction of the Court of schemes of compromise and/or arrangement under section 153 of the Act shall be by petition verified by the petitioner or by one of the petitioners if more than one or if the petition is presented by a corporation by a director or other principal officer of the company.

41. Upon the admission of the petition the Judge shall give directions as to the following matters, viz. :—

(i) the date or dates when the scheme shall be placed before the creditors and/or the members as the case may be ;

(ii) the person who is to act as chairman ;

(*iii*) the time and place where the meeting (or meetings) of the creditors and members is to be held and the procedure to be followed at such meeting;

(*iv*) the notice to be given to the creditors and/or the members;

(*v*) the time within which the chairman is to submit his report to the Court;

(*vi*) the date when the further hearing of the petition is to take place.

42. The notice to be given to the creditors and/or the members under Rule 41 shall be sent by post under certificate of posting and shall be advertised once in a newspaper having circulation in the place where the registered office of the company is situate.

Where the company is not the petitioner, a copy of the petition along with a copy of the order made under Rule 41 shall be served on the company at its registered office at least 14 days before the date fixed for the meeting.

43. The petitioner or his attorney shall on or before the date fixed for the further hearing of the application cause the report to be filed. The petitioner or his attorney shall also not less than 7 days before the date fixed for the further hearing of the application make and file an affidavit showing that the directions given under Rule 41 have been duly complied with.

44. A creditor and/or member shall on payment of the usual fees be entitled within 24 hours after such payment to be furnished by the petitioner or his attorney with a copy of the petition and the report of the chairman and the order made thereon and shall also be entitled upon payment of the prescribed fees to obtain such copies from the Court.

45. Any creditor and/or member (or the company where the petition is presented by a person other than the company) who intends to appear on the hearing of the petition shall leave with or send by registered post to the petitioner or his attorney notice of such intention signed by him or his attorney together with a copy of the affidavit or affidavits, if any, which he intends to use. Such notice shall be served or if sent by registered post shall be posted in time to reach the petitioner not later than seven clear days before the date fixed for the further hearing of the petition. No person who has failed to comply with this Rule shall be allowed to appear on the hearing of the petition without the leave of the Judge.

46. Any affidavit intended to be used by the petitioner in answer to the affidavit or affidavits served in accordance with Rule 45 shall be filed not less than 2 days before the hearing of the petition.

47. Where orders are made under section 153 of the Act, Forms Nos. 35A and 35B set out in Appendix K shall be used with such variations as the circumstances of the case may require.

Attendance and appearance of parties.

48. Every person for the time being on the list of contributories of the company, and every creditor who has lodged his proof shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the Court shall be of opinion that the attendance of any such person has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct that such costs or a gross sum in lieu thereof, shall be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid such sum or costs.

49. The Court may from time to time appoint any one or more of the creditors or contributories to represent before the Court, at the expense of the company, all or any class of the creditors or contributories upon any question or in relation to any proceedings before the Court, and may remove the person or persons so appointed. If more than one person is appointed under this Rule to represent one class, the persons appointed shall employ the same attorney to represent them.

50. No contributory or creditor shall be entitled to attend any proceedings before the Judge unless and until he or an attorney on his behalf has filed an appearance with the Registrar. A book to be called the "Appearance Book" shall be kept by the Registrar in which all such appearances shall be entered. Such book shall be open to the inspection of the Official Liquidator and his attorney.

Winding-up : Petition.

51. The petition shall be in the Form No. 11 or Form No. 12.

52. The petition shall be verified by an affidavit to be made by the petitioner or by one of the petitioners, if more than one, or if the petition is presented by a corporation, by a Director, Secretary, or other principal officer thereof, and presented with and filed upon the admission of the petition : Provided that where the Judge is satisfied that the petitioner is unable to make such affidavit by reason of absence, illness or other sufficient cause of a like nature it may, with the sanction of the Judge to be given at the time of the presentation of the petition, be made by any person duly authorised by the petitioner and competent to make the same. Such affidavit shall be in Form No. 13.

53. Upon the admission of the petition the Judge shall fix a date for the hearing thereof and give directions as to the advertisements to be published and as to the persons on whom copies are to be served. At any time before the petition has been advertised as directed the Judge may alter the date so fiixed for the hearing.

54. The petition shall be advertised fourteen clear days before the date fixed for the hearing thereof as follows :—Once in the *Calcutta* "or *Assam*" *Gazette*, and once at least in an English daily newspaper and a vernacular daily newspaper published "in the locality where the company has its registered office or a principal place of business or assets and liabilities as the case my be," and in the case of a petition to a District Court once at least in one local newspaper, if such there be, and by proclamation affixed to the walls of the Court House. The advertisement shall be in Form No. 14.

[Note.—*Read here the note under Rule 9.*]

55. The petitioner or his attorney shall, not less than three days before the date fixed for the hearing, make and file an affidavit that the directions as to advertisements have been observed and produce for inspection copies of such advertisements. In default of compliance with the directions as to advertisements the appointment for the hearing of the petition shall be cancelled and the petition removed from the file. The Judge, if satisfied, as to the reasons for such default shall fix a fresh date for the hearing of the petition and it shall thereupon be advertised in accordance with Rule 54.

56. Except where the petition is presented by the company, every such petition shall be served at the registered office of the company and if there is no registered office, then at the principal or last known principal office of the company by leaving a copy thereof and a copy of the order made under Rule 53 with any officer or servant of the company, or in case no officer or servant can be found at such office then the service shall be effected either by registered post or in such other manner as the Judge may direct. Where the registered office or the principal office or the last known principal office of the company is situate outside the limits of the Original Civil Jurisdiction of the Court a copy of the petition and a copy of the order shall be served by registered post at the registered office of the company or where there is no registered office then at the principal or last known principal office of the company. If the company is at the date of the admission of the petition being wound up voluntarily, the petition shall also be served upon the liquidator, if any, appointed for the purpose of winding up the affairs of the company by leaving a copy of the petition and a copy of the order made under rule 53 with him or where he does not reside within the local limits of the Ordinary Civil Jurisdiction of the Court by sending copies to him by registered post or in such other manner as the Judge may direct. The affidavit of service shall be in Forms No. 15 and No. 16.

57. Every contributory or creditor of the company on payment of the usual fees shall be entitled within twenty-four hours after such payment to be furnished by the petitioner, or his attorney if any, with a copy of the petition, and of the affidavit in verification thereof and shall also be entitled upon payment of the prescribed fees to obtain such copies from the Court.

Hearing of Petition.

58. A person who intends to appear on the hearing of the petition shall leave with, or send by registered post to, the petitioner, or his attorney, notice of such intention signed by him or by his attorney. Such notice shall be served, or, if sent by registered post, shall be posted in time to reach the addresses not later than two clear days before the day appointed for the hearing of the petition. No person who

has failed to comply with this Rule shall be allowed to appear on the hearing of the petition without the leave of the Judge. Such notice shall be in Form No. 17.

59. An affidavit intended to be used in opposition to or in support of the petition shall be filed not less than five days before the date fixed for the hearing thereof and notice of the filing thereof shall be given to the petitioner, or his attorney, on the day on which the affidavit is filed. If any person fails to comply with this Rule the affidavit, unless the Judge otherwise directs, shall not be used on the hearing of the petition.

60. An affidavit intended to be used in reply to an affidavit filed in opposition to the petition or in support of the petition shall be filed not less than two days before the date fixed for the hearing of the petition. Notice of such filing shall be given forthwith to the person by whom the affidavit in opposition was filed or to his attorney.

61. When a petitioner applies for leave to withdraw his petition or asks that it be dismissed or that the hearing thereof be adjourned or fails to appear in support thereof or if appearing does not apply for an order in terms thereof, or if for any other sufficient reason the Judge shall think fit so to do, the Judge may, upon such terms as he thinks just, substitute as petitioner any creditor or contributory who in his opinion would have a right to present a petition, and is desirous of prosecuting the petition already admitted.

62. An application for leave to withdraw a petition for winding-up which has been advertised in accordance with the provisions of Rule 54 hereof shall not be heard at any time before the date fixed in the advertisement for the hearing of the petition.

63. Where the Judge allows a creditor or a contributory to be substituted as petitioner in an application for the winding up of the company under Rule 61, he shall adjourn the hearing of the petition to a date to be fixed by him. Such creditor or contributory shall within seven days from the making of the order file a clean copy of the petition with such amendment as he desires to incorporate therein and shall also file an affidavit setting out the grounds upon which he supports the petition. The amended petition shall be treated as the petition for the winding-up of the company.

64. The petitioner or his attorney shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition and of their respective attorneys. On the day appointed for the hearing of the petition a copy of the list or if no notice of intention to appear has been given, a statement in writing to that effect shall be submitted by the petitioner or his attorney to the Court, prior to the hearing of the petition.

Winding-up Order and Summons for Directions.

65. When an order for the winding-up of a company by or under the supervision of the Court has been made the petitioner or his attorney shall forthwith send to the Registrar of Companies a notice in Form No. 18. The Registrar shall by letter forthwith send notice of the order to the Official Receiver except where a person other than the Official Receiver has been appointed to act as liquidator.

66. At the time of making the winding-up order, or at any time thereafter, the Judge may (1) appoint an Official Liquidator either temporarily or permanently and fix his remuneration, (2) sanction the appointment by the Official Liquidator of an attorney to assist the Official Liquidator in the performance of his duties, (3) give directions as to (*a*) the advertisements to be published and the persons, if any, on whom the order shall be served as also the mode of such service, (*b*) the persons to whom notice shall be given of the further proceedings, (*c*) the persons on whom the summons for directions hereinafter prescribed shall be served and the mode of such service. The order shall be in Form No. 19 or Form No. 20.

67. If the company is not the petitioner or does not appear at the hearing the order shall be served upon the company.

68. In default of any directions as to advertisements the order shall within fourteen days after the order shall have been sealed be advertised by the petitioner, or the substituted petitioner as the case may be, once in the *Gazette of India* and once in the *Calcutta* "or *Assam*" *Gazette* and shall be served upon such person and in such manner as the Judge may direct. The form of advertisement shall be in Form No. 21.

[Note. *In this Rule the words "or Assam" have been inserted with effect from 1st May, 1940. Vide Notification in the Calcutta Gazette dated 25th April, 1940, Part I, pp. 1286-87.*]

69. Within fourteen days, or such less time as the Judge may direct, after the order shall have been sealed, a summons for directions shall be taken out by the Official Liquidator, if appointed otherwise by the petitioner, or by any other person directed as aforesaid. Upon the hearing of such summons directions shall be given by the Judge in respect of such matters as he shall deem necessary or expedient including any of the matters following :—(*a*) for the appointment of an Official Liquidator (if not already appointed or if appointed temporarily), (*b*) delegation under section 246 of the Act of the powers of the Court, (*c*) for the proof of debts, (*d*) settlement of the list of contributories, (*e*) powers of the Official Liquidator in respect of matters specified in section 179 of the Act. The further proceedings under the order shall be continued by adjournment of such summons, and save as otherwise provided by these Rules all applications by an Official Liquidator, creditor or contributory, shall be made by restoration of such summons supported by affidavit : Provided that the Judge may direct the service or re-service of such summons or of a further summons on any person.

70. All applications by an Official Liquidator shall be made on notice to such persons as may be affected by the order sought for and to such persons as the Court may direct.

71. Any person intending to use any affidavit in any proceeding taken in the winding-up after the making of the order shall file the same and unless the Judge otherwise directs or unless otherwise required by these Rules, shall serve a copy thereof on the Official Liquidator, or if there shall be no Official Liquidator, on the petitioner or his attorney, not less than two clear days before the hearing of any application or proceeding upon which it is intended to be used.

Provisional appointment of an Official Liquidator.

72. The Judge may, upon the application of the petitioner or of a creditor or contributory made on petition and upon proof by affidavit or otherwise of sufficient grounds for making the appointment, provisionally appoint an Official Liquidator (in these Rules called a Provisional Liquidator) upon such terms, as to security, if any, and otherwise as he may think fit. An application for the appointment of a Provisional Liquidator shall, except where the application is made by the company, be made on notice to the company. The Judge may, in special cases, for reasons to be recorded in writing, dispense with the notice.

73. The order appointing a Provisional Liquidator shall state the nature and description of any property of which possession is ordered to be taken and the duties of the Provisional Liquidator. Such order shall be in Form No. 22.

74. Upon the appointment of a Provisional Liquidator or at any time thereafter, the Judge may give such directions and make such order as he thinks fit as to the remuneration of the Provisional Liquidator and the payment thereof and the payment of all costs, charges and expenses properly to be incurred by him.

75. The Rules contained in this chapter relating to Official Liquidators shall, so far as the same are applicable and subject to any directions of the Judge or Court in each case, apply to Provisional Liquidators.

Appointment and duties of Official Liquidator.

76. An application to appoint an Official Liquidator shall be made on notice to the company except where the application is made by the company and to such other persons on behalf of the creditors and contributories as the Judge may direct. Notice of the said application shall also be advertised if the Judge so directs once in a newspaper having circulation in the place where the registered office is situate.

77. Where the Judge directs notice of an application to be advertised under Rule 76, the advertisement shall be in Form No. 23 and shall be published so that the first advertisement shall appear not less than seven days before the time so fixed.

78. Creditors or contributories may, on the date fixed for such appointment, nominate any person or persons for appointment as Official Liquidator, and every nomination shall be in writings signed by the nominator and nominee and contain an undertaking by the nominee that he will furnish such security as the Judge may order. Nomination shall be in Form No. 24.

79. Where an Official Liquidator is appointed subject to his furnishing security to the satisfaction of the Registrar or the District Judge, as the case may be, no copy of the order shall issue (except for purposes of appeal and except where the Court other-

wise directs) until such security hs been furnished and certified as hereinafter provided. A certified copy of the order appointing an Official Liquidator, whether with or without security, shall be filed by him with the Registrar of Joint Stock Companies within a fortnight of the order being made or within ten days of the security being furnished, where security has been directed.

80. Every Official Liquidator, directed to furnish security, shall do so by depositing Government securities or by entering into a bond with one or more sufficient sureties within such time as the Judge may direct. Such bond shall be in Form No. 27 or Form No. 28 and the affidavit by such sureties shall be in Form No. 29.

81. Where security is furnished by a Liquidator in accordance with rule 80, a certificate shall be issued by the Registrar or the District Judge, as the case may be, certifying that the security has been duly furnished. Such certificate shall be in Form No. 30.

82. If a Provisional Liquidator or Official Liquidator fails to furnish the required security within the time ordered or within any extension thereof, the Judge may rescind the order of appointment, and make such other appointment and order as to costs as he considers fit and proper.

83. If a Provisional Liquidator or Official Liquidator fails to maintain the security order to be furnished the Judge may remove him and make such other appointment and such order as to costs as he may think fit.

84. If it shall appear at any time that the security furnished by the Provisional Liquidator or Official Liquidator is inadequate or excessive the Judge may upon the application of the Provisional Liquidator or Official Liquidator or of a creditor or contributory order that the security be increased or reduced in amount.

85. An order made for the appointment of an Official Liquidator shall be in Form No. 25.

86. The appointment of an Official Liquidator shall be advertised by such Liquidator in such manner as the Judge may direct immediately after the order has been filed. Such advertisement shall be in Form No. 26.

87. Every Official Liquidator shall at such time as may be directed by the Court but not less than twice in each year during his tenure of office file in Court an account of his receipts and payments as such liquidator. The account shall be in duplicate and shall be verified by affidavit. The accounts and affidavit shall be in Forms Nos. 33 and 34.

88. Upon the accounts being filed in a Court the Registrar or the District Judge, as the cas emay be, shall cause the accounts to be audited. For the purposes of such audit, the liquidator shall produce before the auditor all vouchers, books and accounts which may be required by the auditor in support of the. said account and shall furnish such information as the auditor may require. After the accounts have been audited, one copy thereof shall be filed in the Court and the duplicate shall be sent by the Registrar or the District Judge, as the case may be, to the Registrar of Joint Stock Companies to be kept with his records. Notice of such audit shall be given to such persons as the Court may direct.

89. Whenever an Official Liquidator shall submit his accounts to be passed, and also at other times whenever the Judge may so direct, the Official Liquidator shall satisfy the Judge by affidavit or otherwise, as the Judge may direct, that his sureties are living, and resident in British India and have not been adjudged insolvent, or in the case of a corporation, that such surety is carrying on business in British India, and in default thereof he may be directed to furnish fresh security.

90. An Official Liquidator, except by leave of the Judge, shall not directly or indirectly, by himself or by any partner, clerk, agent, servant or otherwise enter into any transaction of any nature whatsoever with the company or himself as such Liquidator.

91. Any transaction had in breach of the provisions of Rule 90 may be set aside by the Judge on the application of any creditor or contributory or of his own motion. The Judge may forthwith remove an Official Liquidator acting in breach of Rule 90 and may make such order as to costs as he shall think fit.

92. In any case in which the leave of the Judge is given under Rule 90, all costs of obtaining such leave shall be borne by the person in whose interest such leave is obtained, and shall not be payable out of the company's assets.

Banking Account and Investment by Official Liquidator.

93. Upon a winding up order being made, the Official Liquidator shall as soon as may be after his appointment open an account in the name of "the Official Liquidator of the Company in liquidation" with a scheduled Bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934, or with such other bank as the Court may select on an application made by him for the purpose under the proviso to section 244A. All moneys received in the course of the winding up shall be paid into such account immediately after the receipt thereof.

94. No money shall be paid out of the aforesaid bank except upon cheques or orders signed by the Official Liquidator and countersigned by the Registrar or, where the winding up is by a District Court, by the District Judge or such other person as he may nominate for the purpose, provided that the Court may in special cases dispense with such countersignature.

95. All bills, *hundis*, notes and other securities of a like nature payable to the company or to the Official Liquidator thereof shall as soon as they shall come to the hands of such liquidator be deposited by him with such bank for the purpose of being presented for acceptance and payment or for payment only as the case may be.

96. No bills, *hundis* notes or other securities deposited as aforesaid shall be delivered out save upon a request signed by the Official Liquidator and countersigned by the Registrar or the District Judge or the officer nominated by the District Judge as the case may be.

97. All or any part of the money for the time being standing to the credit of the account of the Official Liquidator at the bank and not immediately required for the purposes of winding-up, may be invested in the purchase of securities issued by the Government of India in the name of the Official Liquidator. All such investments shall be made by the bank, upon a request signed by the Official Liquidator; such request shall be in Form No. 32. Such securities shall be retained by the bank in the name and on behalf of the Official Liquidator, and shall not afterwards be sold or transferred or otherwise dealt with, except upon a direction for that purpose signed by the Official Liquidator and countersigned by the Registrar or where the winding up is by a District Court, by the District Judge or such other person as he may nominate for the purpose.

98. All dividends and interest to accrue due from any such securities shall from time to time be received by the bank (for which purpose the Official Liquidator may execute such power or powers of attorney as may be necessary) and placed to the credit of the account of such Official Liquidator.

99. The sanction of the Judge under section 179 (*f*) of the Act shall be endorsed on any bill of exchange, *hundi* or promissory note and signed by the Registrar.

Books of account and records of Official Liquidator.

100. The Official Liquidator shall forthwith upon his appointment provide and keep proper books of account for the purpose of showing the receipts and payments of the company in its liquidation and of all such transactions and matters as may be necessary to furnish a correct record of his administration of the affairs of the company. In particular, he shall keep, (*a*) a cash book, in which shall be entered from day to day all receipts and payments, (*b*) a ledger, which shall include individual accounts of the contributories, in which every contributory shall be debited with the amount payable by him in respect of any call, and (*c*) a book to be called the "Record Book" in which shall be recorded all minutes, all proceedings had, and resolutions passed at any meeting of creditors or contributories and all such matters other than matters of account as may be necessary to furnish a correct record of his administration of the affairs of the company.

101. Where the Liquidator is authorised to carry on business of the company, he shall keep separate books of accounts in respect of such business.

102. A creditor or a contributory shall be entitled to obtain from the Court or from the Registrar of Joint Stock Companies a copy of any account filed by the Liquidator upon payment of the prescribed fees.

Statement of Affairs.

103. Any person who under section 177-A of the Act has been required by the Official Liquidator to submit and verify a statement as to the affairs of the company shall be furnished by him with such forms and instructions as he may in his discretion consider necessary. The statement shall be made out in duplicate and shall be submitted

to the Official Liquidator within the time prescribed by the section or within such extended time as the Official Liquidator or the Judge may, for special reasons, appoint. One copy shall be verified by an affidavit. The Official Liquidator shall cause the verified statement of affairs to be filed in the Court and shall retain the duplicate thereof for his records.

104. The Official Liquidator may from time to time, whether before or after the submission of the statement, hold personal interviews with persons required to submit the statement for the purpose of investigating the company's affairs and it shall be the duty of every such person to attend on the Official Liquidator at such time and place as the Official Liquidator may appoint and give the Official Liquidator all information that he may require and answer all such questions as may be put to him by the Official Liquidator.

105. Any person making or concurring in the making of a statement in the affidavit as required by section 177-A shall be allowed and shall be paid by the Official Liquidator out of the assets of the company such costs and expenses incurred in or about the preparation and making of the statement and affidavit as the Official Liquidator may consider reasonable or as the Judge may on application by such person direct.

106. Where any person required to submit a statement under section 177-A requires any extension of time, he shall apply, in the first instance, to the Official Liquidator who may, if he thinks fit, give a written certificate extending the time and this certificate shall be filed with the proceedings in the winding up.

107. Where the Official Liquidator refuses to grant an extension of time for submitting the statement of affairs, the person required to submit the statement may on notice to the Official Liquidator apply to the Judge.

108. Any application to dispense with the requirements of section 177-A shall be supported by a report of the Official Liquidator showing the special circumstances which in his opinion render such a course desirable. Where the Judge makes an order dispensing with the requirements of the section, he may give such consequential directions as he thinks fit.

Report of Official Liquidator.

109. The Official Liquidator shall, as soon as practicable after receipt of the statement, to be submitted under section 177-A, and not later than four or with the leave of the Court six months from the date of the order and in a case where the Court orders that no statement shall be submitted as soon as practicable prepare and file in the Court a report in accordance with the provisions of section 177-B.

110. The Official Liquidator may if he thinks fit make from time to time further reports to the Court stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or in its formation or by any director or other officer of the company in relation to the company since the formation thereof and any other matters which in his opinion it is desirable to bring to the notice of the Court.

111. Where a further report is made by the Official Liquidator in accordance with Rule 110, the Judge shall fix a date when the said report shall be considered, and shall on the date so fixed give such directions to the Official Liquidator, as he shall think fit in relation thereto. The Official Liquidator shall personally or by advocate or attorney attend the consideration of the report and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require.

Committee of Inspection.

112. As soon as possible after the meeting of the creditors and contributories held in accordance with section 178-A, the Official Liquidator shall report the result of such meeting to the Court.

113. Where there is a difference between the determinations of the meetings of the creditors and contributories, the Judge shall on the application of the Official Liquidator fix a time and place for consideration of the resolutions and determinations and make such order as may be necessary. In any other case, the Judge may on the application of the Liquidator forthwith make any appointment necessary for giving effect to such resolutions or determinations.

114. When the time and place has been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the Liquidator in such manner as the Judge may direct.

115. On the date fixed in accordance with Rule 113, the Judge shall hear the Liquidator and any creditor or contributory who may appear on the application.

116. If an Official Liquidator appointed by the Court shall die or resign or be removed, another Official Liquidator may be appointed in his place in the same manner as in the first appointment.

117. An Official Liquidator who desires to resign his office shall apply to the Judge by petition for permission, and thereupon the Judge shall determine whether or not the resignation shall be accepted, or may give such directions and make such order as he shall deem expedient.

118. If an Official Liquidator be adjudged insolvent the Judge shall, upon the application of any creditor or contributory, remove such Liquidator.

119. Upon an Official Liquidator being permitted to resign or being removed from his office, he shall deliver to his successor or to such person as the Judge may direct, the property and assets of the company in his hands and all books kept by him and all other books, documents, papers and accounts in his possession relating to the company.

120. The Judge may, at any time during the progress of the liquidation, on the application of the Official Liquidator, give directions as to the disposal of such of the books, papers and documents of the company or of the Official Liquidator as are no longer required for the purpose of the liquidation.

Remuneration of Official Liquidator.

121. The Official Liquidator shall be allowed, in his accounts or otherwise paid, such remuneration as the Judge may direct, and such remuneration may be fixed either at the time of his appointment, or thereafter and may be altered. Such remuneration may be fixed or altered, to cover or exclude the employment of assistants or clerks, office rent and incidental expenses. No money shall be appropriated to such remuneration, save upon the passing of an account, or upon an application by the Official Liquidator for that purpose on notice to such person (if any) and supported by such evidence as the Judge may direct; provided nevertheless that the Judge may from time to time allow an Official Liquidator to appropriate such sum as he may think fit on account of remuneration to be thereafter fixed.

122. An Official Liquidator shall not accept or agree to accept from any person any gift, remuneration or benefit whatever nor shall he without the sanction of the Judge give up or agree to give up any part of such remuneration to any person.

Debts, Claims and Proofs.

123. For the purpose of ascertaining the debts due by and claims against the company and of requiring debts and claims to be proved an advertisement shall be published by the Official Liquidator in such manner as the Judge shall direct. Such advertisement shall be in Form No. 36. Unless otherwise ordered by the Judge the date fixed in the advertisement shall not be less than 14 days from the date of the publication thereof.

124. In a winding up by the Court, every creditor shall subject as hereinafter provided prove his debt unless the Judge in any particular case shall give directions that any creditor or class of creditors shall be admitted without proof.

125. A debt may be proved in any winding up by delivering or sending through the post an affidavit. The affidavit may be made by the creditor himself or by some person authorised by or on his behalf. If made by a person so authorised, it shall state his authority and means of knowledge.

126. The affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt and shall specify the vouchers, if any, by which the same can be substantiated. The Liquidator to whom the proof is sent may at any time call for the production of the vouchers.

127. An affidavit proving a debt shall state whether a creditor is or is not a secured creditor. Where a creditor seeks to prove in respect of a bill of exchange, promissory note or any other negotiable instrument or security of a like nature on which the company is liable, such bill of exchange, note, instrument or security must be produced to

the Liquidator and be marked by him before the proof is admitted. Such affidavit shall be in Form No. 38.

128. No creditor need attend upon the investigation, nor prove his debt or claim unless required to do so by notice from the Official Liquidator, to be given by prepaid letter post at the last known address of the creditor. Such notice shall be in Form No. 37.

129. A creditor so required to prove his debt or claim shall do so by affidavit to be sent by him to the Official Liquidator by registered letter post and if not made by the creditor himself such affidavit shall state the authority and means of knowledge of the deponent. Such affidavit shall contain particulars of any security held sufficient to identify the same and shall be in Form No. 38.

130. The Official Liquidator may at any time call for the production of the securities or vouchers specified in the affidavit referred to in Rule 129 and in default of such production may reject the proof.

131. The Official Liquidator shall within twenty-eight days after receiving a proof either admit or reject it wholly or in part and shall thereupon inform those creditors whose claim he wholly admits of his decision in respect of such claims. If he rejects the proof, he shall state in writing to the creditor the grounds of the rejection.

132. When the Official Liquidator has completed his investigation of all debts and claims he shall file a list thereof in Court supported by affidavit and obtain an appointment from the Judge to settle the same, and shall give not less than four days' notice of such appointment to every person included in such list except those whose claims he wholly admits stating that his debt or claim has been rejected in whole or in part as the case may be and requiring him to prove as much of it as has been rejected before the Judge. Such affidavit and notice shall be in Form No. 39 and Form No 40, respectively.

133. Upon the date appointed for settlement of the list of creditors or any adjourned date the Judge shall adjudicate thereon.

134. Such creditors as prove their debts or claims shall, unless the Judge shall otherwise direct, bear the costs of such proof.

135. The settlement of the list of debts and claims shall be recorded in a certificate signed by the Judge in Form No. 41.

136. If the Official Liquidator is of opinion that a proof has been improperly admitted he may apply, on notice to the creditor who made the proof, to expunge the proof or reduce its amounts.

137. If the Official Liquidator declines to interfere in the matter a creditor or contributory may apply to the Judge to expunge or reduce a proof.

Collection and Distribution of Assets.

138. The duties imposed on the Court by section 184 (1) of the Act in a winding up by the Court, with regard to the collection of the assets of the company, and the application of the assets in discharge of the company's liabilities, shall be discharged by the Official Liquidator as an officer of the Court subject to the control of the Judge.

139. For the purpose of the discharge by the Official Liquidator of such duties the Official Liquidator shall, for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a Receiver of property appointed by the Court, and the Judge may, on his application, enforce such acquisition or retention accordingly.

List of Contributories.

140. The Official Liquidator shall with all convenient speed after his appointment, prepare a list of the contributories of the company and shall, subject to any order made upon the hearing of the summons for directions, appoint a time and place for the preliminary settlement of such list. The Official Liquidator shall, so far as is practicable, state therein the respective addresses of and the number of shares or extent of interest to be attributed to each contributory, and shall distinguish the several classes of contributories. As regards representative contributories the Official Liquidator shall observe the requirements of section 184 (2) of the Act.

141. The Official Liquidator shall give notice in writing of the time and place appointed for the preliminary settlement of the list of contributories to every person

included in the list, and shall state in the notice to each person in what character and for what number of shares or interest such person is included in the list. Such notice shall be in Form No. 42.

142. On the day appointed for the preliminary settlement of the list of contributories the Official Liquidator shall hear any person who has any objection to prefer with reference to his inclusion or to the extent thereof in the said list, and after such hearing the Official Liquidator shall complete the preliminary settlement of the list and file the same. Such list shall be in Form No. 43.

143. Upon the list of contributories being filed the Official Liquidator shall obtain an appointment from the Judge to settle the same, and shall give notice in writing of such appointment to every person included in such list, stating in what character and for what number of shares or interest such person is included in such list and by such notice shall inform such person that any application for the removal of his name from the list, or for any other variation of the list, should be made on such appointed day. Unless the Judge otherwise directs no application to vary the list as filed shall be entertained unless made on the day so appointed. Any application for such purpose made on any day other than the day so appointed shall be made by summons to be served on the Official Liquidator at least four clear days before the returnable date of such summons and unless good cause be shown that such application could not have been made on the appointed day, all costs of and incidental to such application shall be payable by the applicant. The notice prescribed by this Rule shall be in Form No. 44.

144. Upon the settlement of the list by the Judge the same shall be endorsed and signed by the Judge. Such endorsement shall be in Form No. 45.

145. The Official Liquidator may at any time apply to the Judge to vary the list of contributories. Upon such application the Judge shall give such directions as to notice and otherwise and make such orders as may be necessary.

146. The address of a contributory as stated in such list shall, unless otherwise directed by the Judge, be his address for service under these Rules.

Calls.

147. Where the Official Liquidator desires to make any call on a contributory or contributories for any purpose authorised by the Act, he shall in the first instance summon a meeting of the Committee of Inspection, if any, for the purpose of obtaining their sanction to the intended call. The notice of such meeting shall be sent to each member of the Committee of Inspection and shall contain a statement of the proposed amount of the call and the purpose for which it is needed. The sanction of the Committee of Inspection shall be given by a resolution and shall be passed by a majority of the members. Where there is no Committee of Inspection, the Liquidator shall not make a call without obtaining the leave of the Court.

148. Where there is no Committee of Inspection, or where the Official Liquidator does not agree with the decision of the Committee of Inspection, he may apply to the Court for leave to make a call and the Court shall on such application make such orders as it thinks fit. If on the hearing of such an application, the Court directs that the Official Liquidator may have leave to make a call, the subsequent proceedings shall be in accordance with the provision of Rule 151 hereof.

149. An application by the Official Liquidator for leave to make a call on contributories of the company or any of them shall be made by petition. Such petition shall be in Form No. 46.

150. Upon such application, the Judge, if he admits the petition, shall fix a date for the hearing thereof, and notice of such appointed date shall be given by advertisement or otherwise as the Judge may direct. No contributory shall be served with individual notice unless the Judge shall so direct and every notice and advertisement to be served, given or published under this Rule shall be served or published at least 14 days before the date so appointed. Such notice shall be in Form No. 47.

151. When any order authorising a call has been made a copy thereof shall forthwith be served by registered post, or as the Judge may direct, upon each of the contributories liable to pay such call together with a notice by the Official Liquidator making such call and specifying the amount due from such contributory in respect of such call. Such order and notice shall be in Form No. 48 and Form No. 49, respectively. At the time of making an order authorising the call, the Judge shall give directions as to the time within which such calls shall be paid and shall indicate whether the payment

shall be made to the Official Liquidator or to the bank where the liquidator has his account.

152. The payment of the amount due from each contributory may be enforced by order of the Judge to be made on summons by the Liquidator, supported by an affidavit. Such summons, affidavit, and order shall be (in ?) Forms Nos. 50, 51 and 52, respectively. The affidavit of service of the order shall be in Form No. 53.

Compromise of claims by company.

153. No claim by the company against any person shall be compromised or abandoned by the Official Liquidator without the sanction of the Judge upon notice to such person or persons if any, as the Judge shall direct.

154. Every application for sanction to a compromise or arrangement with any person indebted to the company shall be supported by the affidavit of the Official Liquidator stating that he is satisfied for reasons stated in such affidavit that the proposed compromise or arrangement will be beneficial to the company.

Appeals against the decision of the Liquidator.

155. If a creditor or contributory is dissatisfied with the decision of the Liquidator on any matter, the Judge may on the application of the creditor or contributory reverse or vary the decision.

Application under section 183 (5).

156. An application under section 183 (5) of the Act shall be made by petition supported by the affidavit of the applicant on notice to the Official Liquidator and shall be made within twenty-one days from the date of the act or decision complained of.

Proceedings under sections 215 and 216.

157. (*a*) An appeal under section 215 shall be by petition verified by affidavit and shall be on notice to the Liquidator.

(*b*) An application under section 216 of the Act shall be by petition verified by affidavit. Notice of the application shall be given to such person or persons as the Court shall direct.

Sales of Property.

158. No property belonging to a company which is being wound up by the Court shall be sold by the Liquidator without the sanction of the Court. Where a sale is sanctioned by the Court, the sale shall be held by the Liquidator or if the Judge shall so direct by an agent or auctioneer appointed by him for such purpose. All sales shall, unless the Judge otherwise directs, be made by public auction.

159. In sales of moveable property, unless the Judge otherwise directs, the conditions or contract of sale shall be the same as those in force in sales under decrees or orders of the Court. Where for special reasons the Liquidator is of opinion that a special contract is necessary, he shall apply to the Registrar or the District Judge, as the case may be, to settle the terms.

160. The purchase money in sales held in accordance with Rule 156 shall be paid in such manner as the Judge may direct and in the absence of any directions shall be paid by the respective purchasers to the Official Liquidator or to his credit at the bank where he has his account.

Dividends.

161. No dividend shall be declared by the Official Liquidator without the sanction of the Judge.

162. Not less than two months before applying to Court for leave to declare a dividend, the Official Liquidator shall give notice of his intention to do so to such of the creditors mentioned in the statement of affairs as have not proved their debt. Such notice shall specify the latest date up to which proofs must be lodged which shall not be less than 14 days from the date of such notice.

163. Where any proof is lodged pursuant to such notice, the Official Liquidator shall in relation to the admission or rejection thereof act in accordance with Rule 131.

The Official Liquidator shall apply, if necessary, to vary the list of creditors settled by the Court.

164. Not less than one month's notice shall be given by the Official Liquidator of his intention to declare and pay a dividend. Such notice shall be given by advertisement (unless the Judge otherwise directs) and by sending by prepaid letter post a notice to every person whose name appears in the list of creditors as certified. Such notice shall be in Form No. 59 and Form No. 60.

165. Dividends may, at the request and risk of the person to whom they are payable, be transmitted to him by post.

166. A person to whom dividends are payable may lodge with the Official Liquidator an authority in writing to pay such dividends to another person named therein. Such authority shall be in Form No. 61.

167. Every order by which the Official Liquidator in a winding-up by the Court is authorised to make a return to contributories of the company shall, unless the Judge shall otherwise direct, contain or have appended thereto a schedule or list (which the Official Liquidator shall prepare) setting out in tabular form the names and addresses of the persons to whom the return is to be made and the amount of money payable to each person and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of settlement of the list of contributories. The schedule or list shall be in Form No. 62, and notice of the return shall be given to each contributory in Form No. 63.

General Meeting of Creditors and Contributories.

168. All general meetings of creditors or contributories shall, unless the Judge otherwise directs, be convened and held in the manner hereinafter provided.

169. The Official Liquidator shall summon a meeting by giving not less than seven days' notice of the time and place thereof in two daily newspapers published in Calcutta and shall, not less than seven days before the day fixed for the meeting, send notice thereof by prepaid letter post to every person appearing to him to be present thereat. Such notice shall be in Form No. 54.

170. In the case of a meeting convened by direction of the Judge the Official Liquidator shall certify by affidavit that such notices of the meeting have been duly posted. Such affidavit shall be in Form No. 55.

171. All meetings shall be held at such time and place as in the opinion of the Official Liquidator is most convenient for the majority of those entitled to be present thereat.

172. The Official Liquidator may require a creditor or contributory who is desirous that he should convene a meeting to deposit as a condition precedent thereto a sum sufficient for the costs thereof, to be computed in manner hereinafter stated, and on any application to the Judge by a creditor or contributory to direct the Official Liquidator to convene a meeting whether the Official Liquidator shall or shall not have required such deposit to be made, the Judge may fix a sum to be deposited by the applicant for such costs, and such sum shall include all disbursements for printing, stationery, postage and hire of room, to be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, Re. 1 per creditor or contributory for the first 25 creditors or contributories, annas 8 per creditor or contributory for the next 75 creditors or contributories, annas 4 per creditor or contributories after the first hundred. The said sum so deposited shall be repaid out of the assets of the company if the Judge shall so direct.

173. At every meeting of creditors or contributories the Official Liquidator, or some person nominated by him, shall be Chairman of the meeting. In the event of more than one person being appointed Official Liquidator the person named first in the order of appointment shall be entitled to take the chair or make the aforesaid nomination. Such nominations shall be in Form No. 56.

174. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy, and voting on the resolution, have voted in favour of the resolution. At a meeting of contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulation of the company.

175. The Official Liquidator shall file with the Registrar a copy certified by him of every resolution passed at a meeting of creditors or contributories.

176. No proceedings or resolutions had or passed at a meeting of creditors or contributories shall, unless the Judge otherwise orders, be invalidated by reason of any creditor or contributory not having received notice thereof.

177. The Chairman may, with the consent of the meeting, adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original place of meeting unless in the resolution for adjournment another place is specified or unless the Judge otherwise orders.

178. (1) A meeting may not act for any purpose except for the adjournment of the meeting unless there are present thereat in person at least three creditors entitled to vote, or three contributories so entitled, or all the creditors entitled to vote, or all the contributories, if the number of creditors entitled to vote, or the contributories as the case may be, shall be less than three.

(2) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the Chairman may appoint not being less than seven or more than fourteen days. If at such adjourned meeting a quorum be not present two creditors or contributories present in person shall form a quorum and may transact the business for which the meeting was convened.

179. Unless the Judge otherwise directs no person shall be entitled to vote at a meeting of creditors unless he has lodged with the Official Liquidator a proof of the debt which he claims to be due to him from the company, and such proof has been admitted, wholly or in part, before the date on which the meeting is held.

180. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

181. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of the security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security.

182. If a secured creditor votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Judge on application is satisfied that the omission to value the security has arisen from inadvertence.

183. The Chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and he shall sign the same and affix by his own hand the date of such signature.

184. The Chairman of a meeting summoned by the direction of the Judge shall report the result thereof to the Judge. Such report shall be in Form No. 57.

Proxies.

185. A creditor or contributory may vote either in person or by proxy.

186. Every instrument of proxy shall be in Form No. 58, unless the Judge shall otherwise direct.

187. A form of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Liquidator nor of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

188. No creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been admitted or allowed and no contributory shall appoint a proxy who is not a contributory of the company but a creditor or contributory may appoint the Official Liquidator to act as his proxy.

189. A proxy shall be lodged with the Official Liquidator not later than twenty-four hours before the time fixed for the meeting or adjourned meeting at which it is to be used and no proxy shall be admitted thereafter.

190. No minor shall be appointed a proxy.

191. Where a corporation is a creditor, any person who is duly authorised in writing by the corporation to act generally on behalf of the corporation at meetings of creditors and contributories and to appoint himself or any other person to be the corporation's proxy, may fill in and sign the form of proxy on the corporation's behalf

and appoint himself to be the corporation's proxy and a proxy so filled in and signed by such a person shall be received and dealt with as the proxy of the corporation.

192. Where an Official Liquidator holds any proxies and cannot attend the meeting for which they are given, he may, in writing depute some person to use the proxies on his behalf in such manner as he may direct.

193. The proxy of a creditor, blind or incapable of writing, may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence: provided that all insertions in the proxy are in the handwriting of the witness, and that such witness shall have certified at the foot of the proxy that all such insertions were made by him at the request of the creditor and in his presence before the creditor attached his signature or mark.

194. A proxy signed in the vernacular shall also bear, adjacent to the signature, the name of the signatory in Roman characters, and where such name is that of the creditor or contributory the Official Liquidator shall not be bound to make further enquiry as to the genuineness of the vernacular signature.

Examinations under section 195 and section 196.

195. An application for the examination of a person or persons under section 195 of the Act shall be made *ex parte* to the Judge by petition verified by the Official Liquidator stating the facts upon which the application is based. At the hearing of the application the Judge may, if satisfied that a *prima facie* case for examination has been made out, direct the issue of a summons or summonses against the person or persons named in the order for examination and/or for production of documents. The summons shall be in Form No. 68.

196. At the examination of a person so summoned, the Official Liquidator may attend in person, or by attorney or advocate and assist the Court in examining the person summoned.

197. At such examination, save and except the Liquidator and the advocate or attorney employed by him and the person to be examined, no person shall be entitled to attend.

198. Unless the Judge shall otherwise direct, no such examination shall be made in open Court. The notes of the depositions of a person so examined shall be signed by the person examined, and notwithstanding that such notes shall have been filed, shall not be open to the inspection of any creditor, contributory or person other than the Official Liquidator. The person examined, the person having the conduct of the proceedings and the Official Liquidator shall be entitled to a copy on payment of the usual charges, save and except as aforesaid no person shall be entitled to a copy unless the Judge shall so direct.

199. In the High Court the Judge may, at the time of making the order for such examination, direct that it shall be held by an officer of the High Court, and that the powers of the Court as to the conduct of the examination, but not as to costs, shall be exercised by such officer.

200. An application under section 196 of the Act shall be made *ex parte* by petition verified by the Official Liquidator and shall be based on the report made under section 177B (2) of the Act. The petition shall state the names of the persons intended to be examined and that in the opinion of the Liquidator fraud has been committed by such persons in relation to a campany or in relation to the promotion or formation thereof and the facts on which such opinion is based.

201. On the hearing of such an application, the Judge may make the order or may require the Official Liquidator to furnish a further report on any facts or matters which are in his opinion relevant to the application.

202. Where the order directs an examination under section 196 of the Act to be held before the Judge, the order shall fix a date for such examination. Where the order directs the examination to be held before an officer of the High Court or other person nominated for the purpose the Official Liquidator shall forthwith obtain an appointment for such examination.

203. Notice of the day and the place appointed for such an examination shall be given by the Official Liquidator to the person who is to be examined by serving upon him a copy of the order, by registered post addressed to his usual or last known address.

204. The deposition of the person so examined shall after being read over and signed by him be filed and kept with the records. The Liquidator, the person examined and any creditor or contributory of the company shall be entitled to obtain a copy from the Court on payment of the usual fees.

205. When making an order under section 195 or section 196 of the Act, the Judge may, if he thinks fit, either in the order for examination, or by any subsequent order, give directions as to specific matters on which any person is to be examined.

206. The Court in respect of any examination under section 195 or section 196 of the Act may order that the evidence be taken down in shorthand. Where such order is made, the officer or the Judge before whom such evidence is taken shall nominate a person to take down such evidence and the costs of such person shall be paid by the party at whose instance the order was made or out of the assets of the company as may be directed by the Court.

207. Where during the course of such examination, the person under examination refuses to answer to the satisfaction of the officer or other person appointed, the officer or other person shall report such refusal to the Judge and the person in default shall be in the same position and be dealt with in the same manner as if he had made default in answering before the Judge. The report shall be in writing and shall set forth the question or questions put and the answer or answers, if any, given by the person examined.

208. Upon receiving the report, the Judge may take such action as he shall think fit. Where the Judge is sitting at the time when the default in answering is made, such report may be made immediately.

Application under section 235.

209. An application under section 235 of the Act shall be made to the Judge on summons, to be served, with a copy of any affidavit intended to be used in support, on every person against whom an order is sought eight days before the returnable date of the summons.

210. The Judge may give such directions for the hearing of the summons as to him may seem fit and may direct that evidence shall be taken wholly or in part by affidavit or orally.

211. At the hearing the Official Liquidator and the applicant (if other than the Official Liquidator) and any other person whom the Judge may allow and any person against whom an order is sought may appear and may do so by attorney and advocate and may put such questions to any person orally examined as the Judge may allow.

Applications under section 230-A.

212. An application for leave to disclaim any part of the company's assets pursuant to section 230-A of the Act shall be made *ex parte* by petition verified by an affidavit of the Official Liquidator in the first instance. The petition shall indicate the parties who are interested in the matter and what their interests are and shall state whether any notice has been served on the Liquidator by any such party requiring him to decide whether he will or will not disclaim.

213. On the hearing of the application, the Judge may make an order or may give such directions as he thinks fit as to notice to be given to any of the parties interested and may adjourn the hearing to enable such party or parties to attend.

214. Where such an order is made *ex parte* a copy of the order shall be served on every person interested in the property disclaimed.

215. Where a Liquidator disclaims a leasehold interest he shall forthwith file the disclaimer at the office of the Registrar of Joint Stock Companies.

216. An application under sub-section (6) of section 230-A of the Act for an order to vest any disclaimed property in or to deliver any such property to any person or persons shall be made by petition verified by affidavit.

217. Where such an application relates to property of a leasehold nature and it appears that there is a mortgage or an under-lease of such property, the Court may direct that notice shall be given to the mortgagee or under-lessee that if he does not elect, within a time to be fixed by the notice, to accept and apply for a vesting order upon the terms named in the proviso to the abovementioned sub-section and stated in the notice and such other terms as the Court may think just he will be excluded

from all interest in any such security. The Court may adjourn the application for such notice to be given to such mortgagee or under-lessee. If at the expiration of the time so fixed by the Court, such mortgagee or under-lessee fails to apply for such vesting order, the Court may make an order vesting the property in the applicant and excluding such mortgagee or under-lessee from all interest in or security upon the property.

Meetings of creditors and contributories in relation to a creditors' voluntary winding up.

218. Subject to any directions which the Judge may give, all meetings in a voluntary winding up shall be governed by Rules Nos. 219 to 230.

219. Except and in so far as the subject matter or the context may otherwise require, Rules 172, 174, 177, 178 and 185 to 194, shall apply to meetings of creditors or contributories convened in a voluntary winding up of a company.

220. In any creditors' voluntary winding up, the Liquidator may from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding up.

221. The Liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the *Calcutta* "or *Assam*" *Gazette* and in a local newspaper; and shall, not less than seven days before the day appointed for the meeting, send by post under certificate of posting to every person appearing in the company's books to be a creditor notice of the meeting of creditors and to every person appearing in the company's books or otherwise to be a contributory notice of the meeting of contributories. Notice to a creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the Statement of Affairs of the company or such other address as may be known to the Liquidator. Notice to a contributory shall be sent to the address mentioned in the company's books as the address of such contributory or to such other address as may be known to the Liquidator

[Note. *In this Rule the words "or Assam" have been inserted with effect from 1st May, 1940. Vide Notification in the Calcutta Gazette dated 25th April, 1940, Part I, pp. 1286-87*].

222. An affidavit by the Liquidator that notice of a meeting has been duly posted in accordance with Rule 221 shall be sufficient evidence of such notice having been sent to the person to whom it was addressed.

223. Different times and/or places may, if thought expedient by the Liquidator, be appointed for the meetings of creditors and contributories respectively.

224. Every meeting shall be held at such place and at such time as in the opinion of the Liquidator shall be most convenient. The cost of summoning a meeting of creditors or contributories convened by a Liquidator shall be paid by him out of the assets of the company.

225. The Chairman of any meeting shall be the Liquidator appointed by the company or some person nominated by him for that purpose and in the event of more than one person having been appointed Liquidators each of them shall, if present at the meeting, be entitled to be Chairman or to nominate some other person to be Chairman in priority to the other or others of them according to the order in which they are named in the resolution by which they were appointed : Provided that if a Liquidator shall have been appointed by the Judge in the place of a sole Liquidator appointed by the company, the Liquidator so appointed or his nominee shall be Chairman.

226. The Chairman of the meeting shall have power to adjudicate upon the right of a creditor to vote and the amount for which he should be allowed to vote.

227. For the purpose of voting, a secured creditor shall, unless he surrenders his security, lodge with the Liquidator, before the meeting, a statement giving the particulars of his security the date when it was given, and the value at which he assesses it, and shall be entitled to vote in respect of the balance (if any) due to him after deducting the value of his security. The vote of a secured creditor who has not complied with this Rule shall not be counted at the meeting.

228. No Liquidator appointed by the company nor any person who shall be proposed for appointment by the Judge as Liquidator under the provisions of section 209 of the Act shall directly or indirectly solicit or canvas any person for the purpose of obtaining votes or proxies in his favour. No person contravening this Rule shall be

appointed Liquidator and any Liquidator who shall be proved to have contravened this Rule may be removed if the Judge thinks fit.

229. Proxies in favour of the Liquidator appointed by the company may be used by him in voting against any resolution for an application for the appointment of a Liquidator under the provisions of section 209 of the Act.

230. Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall unless the Court otherwise orders be valid notwithstanding that one or more creditors or contributories may not have received the notice sent to them.

Unclaimed funds and undistributed assets in the hands of a Liquidator in a voluntary winding up.

231. In a voluntary winding up, all moneys in the hands of or under the control of a Liquidator representing unclaimed dividends or undistributed assets shall within one week from the date of the final resolution of the company be paid into Court to be held by the Court to the credit of an account to be opened in the name of the company and to be designated the Company's Liquidation Account.

232. The Liquidator when paying in such moneys shall furnish a copy of the final account showing the balance so paid in.

233. An application by a person claiming to be entitled to any part of the moneys so paid in by a Liquidator in accordance with Rule No. 231 hereof shall be made by petition.

234. Where an order for payment is made on such application, the amount directed to be paid shall be paid out of the funds so paid into Court in accordance with Rule No. 231 hereof.

Termination of winding up proceedings.

235. Upon the termination of the proceedings for the winding up of a company the Official Liquidator shall file a final account to which in the event of there being a balance in his hands there shall be attached a statement signed by the Official Liquidator setting out the names and last known addresses of the persons entitled to participate therein the amount to which each is entitled and the nature of his claim thereto. Upon the passing of such account the balance in his hands (if any) shall be certified by the Judge; and upon payment by the Official Liquidator of such balance in such manner as the Judge shall direct the recognizance entered into by the Official Liquidator and his sureties shall be vacated. Such certificate shall be in Form No. 64.

236. Unless the Judge shall otherwise direct, such balance shall be paid either into Court or in the High Court to the Registrar.

237. Upon such payment such balance shall be paid, in the case of a winding-up by the High Court, by the Registrar into an account to be called the "Companies Liquidation Account" to be kept with the Imperial Bank of India.

238. When the Official Liquidator has passed his final account, and such balance has been duly paid the Official Liquidator shall apply to the Judge for an order that the company be dissolved. Such order shall be in Form No. 65.

239. Upon such order being made all documents and books of account or records of the Official Liquidator shall be deposited in Court unless the Judge otherwise directs. Unless otherwise directed, the books and papers of a company which has been wound up shall be destroyed after a period of 3 years from the date of deposit in Court.

Transfer of winding up proceedings.

240. Applications for the transfer of winding up proceedings either from the High Court to a District Court, or from one District Court to another, as the case may be, shall be made to the Judge by petition verified by affidavit. An order for transfer shall be in Form No. 66.

Suits and proceedings "in which a company in liquidation by or under the supervision of the Court, is a party".

241. Upon the making of an order "by the High Court" for the winding up of a company by or under the supervision of the Court all suits and proceedings to which

the company is or shall be a party then pending, or thereafter instituted in, or transferred to the High Court, shall be assigned to and placed in the list of the Judge for the time being exercising jurisdiction under the Act in respect of such company.

[**Note.** *In this Rule in the heading the words within quotation marks have been substituted for other words and in the first line those within quotation marks have been inserted. Vide Notification in the Calcutta Gazette of 30th January, 1941, Part I, p. 320.*]

Application under section 277N.

242. An application under section 277N of the Act shall be made by petition verified by affidavit. Every such application shall be accompanied by a report made by the Registrar of Companies under section 277N (2).

Application under section 281.

243. An application under section 281 shall be by petition verified by affidavit and shall be made on notice to the company or where the company is being wound up to the Liquidator.

Application for prosecution.

244. An application under section 237(1) of the Act shall be made by petition, verified by affidavit, upon notice to the Official Liquidator or Liquidator, as the case may be.

245. Statements, with respect to the proceedings in and the position of a liquidation of a company, under section 244 shall, until the winding up is completed, be filed in Court or with the Registrar of Joint Stock Companies as the case may be once in each year at intervals of twelve months as follows :—

(*a*) The first statement commencing at the date when a Liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding up, shall be filed within thirty days from the expiration of such twelve months, or within such extended period as the Judge may sanction, and the subsequent statements shall be filed at intervals of twelve months, each statement being brought down to the end of the twelve months for which it is filed.

(*b*) If a Liquidator resigns, he must file a statement up to the date of his resignation.

(*c*) Every statement shall be in Form No. 33 and shall be verified by an affidavit in Form No. 34.

246. Any creditor or contributory of a company, which is being wound up, shall be entitled to inspect the statement filed under section 177-A or the statement filed under section 244 on payment of a fee of Rs. 3 and to receive a copy thereof or extract therefrom on payment of the usual charges for supplying copy.

247. Where a Liquidator has not, during any period for which a statement has to be filed, received or paid any money on account of the company, he shall at the period when he is required to file his statement, file a statement in duplicate and with such statement shall also file an affidavit. Such statement and affidavit shall be in the Forms Nos. 33 and 34, respectively.

248. The statement to be laid before the meeting summoned under sections 208D and 209G of the Act shall, in the case of the first statement, be a statement similar in all respects to the first statement filed in Court or with the Registrar of Joint Stock Companies as the case may be under Rule 245 and subsequent statements shall be similar in form to the first statement, but shall commence at the date when the last previous statement terminated and be brought down to the end of twelve months from such date.

248A. The returns to be made under sub-section (3) of section 208E* and sub-section (3) of section 209H of the Act shall be in Forms Nos. 70A and 70B, respectively.

248B. The declaration of solvency under section 207 of the Act shall be in Form No. 69.

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* The expression "208E" in rule 248A has been substituted for "208B" by Notification in the Calcutta Gazette of 18th July, 1940, Part I, p. 1972.

249. The notice of appointment of a Liquidator in a voluntary winding-up to be filed with the Registrar of Companies under section 214 of the Act shall be in Forms Nos. 67A and 67B.

Miscellaneous Rules.

250. Service upon contributories and creditors shall be effected except where personal service is required, by sending the notice, or a copy of the petition, summons or order or other documents to be served, through the post in a registered letter addressed to the attorney (if any) of the party to be served, or otherwise to the party himself, and if a creditor, to the address stated in the list of debts and such notice or copy, summons, order or other proceedings shall be considered as served at the time the same ought to have been delivered in due course of delivery by the Post Office, and notwithstanding the same may be or have been returned by the Post Office.

251. No service under these Rules shall be deemed invalid by reasons of any error or omission in the name, style or designation of the person on whom service is sought to be made, provided the Judge is satisfied that such person has not been prejudiced thereby.

252. In the High Court attorneys shall be entitled to charge and shall be allowed the fees set forth in the Table of fees in Chapter XXXVI of the Rules of the High Court on the Original Side, so far as the same are applicable, but the Judge may in a special case allow an attorney fees as if he were an advocate.

253. Where an order is made in the High Court for the payment of any costs, they shall, where they relate to any proceedings in Court, be taxed by the Taxing Officer. In the District Court such costs shall be taxed or assessed by the Judge or by such officer as may be authorised to perform such duties.

254. In the High Court, in conveyancing matters and in matters which do not relate to proceedings in Court, the costs shall be certified by two independent attorneys.

255. An application for an order for costs, for which provision might have been but has not been made by a previous order shall only be made upon notice to the Official Liquidator who may appear on such application and object thereto. No costs of or incidental to such application shall be allowed to the applicant, unless the Judge is satisfied that the omission to make such provision was not due to any default on the part of the applicant.

256. Where an application is made in the voluntary winding-up of a company, whether or not an order shall have been made that the voluntary winding-up shall continue but subject to the supervision of the Court, these Rules so far as may be, shall be applied to the subject matter and mode of such application.

"257. The publication of advertisements and notices under rules 9, 54, 68 and 221 shall, in the case of a company having its registered office or a principal place of business or assets and liabilities, as the case may be, within the province of Bengal, be made in the Calcutta Gazette and, in the case of a company having its registered office or a principal place of business or assets and liabilities, as the case may be, within the province of Assam, be made in the Assam Gazette."

[**Note.** *With effect from 1st may, 1940 the above new Rule 257 has been inserted. Vide Notification in the Calcutta Gazette of 25th April, 1940, Part I. pp. 1286-87.*]

Appendix to the Rules of the High Court under the Indian Companies Act, etc.

FORM No. 1 (Rule 16).

Petition for reduction of capital.

(Title.)

(*a*) Insert full name of company.

The humble petition of (*a*)
Limited and Reduced.

SHEWETH—

1. Your petitioner the abovenamed company (hereinafter called "the company") was incorporated on the day of 19 , under the provisions of the Indian Companies Act as a company limited by shares.

(*b*) State full address of the registered office.

2. The registered office of the company is situated at (*b*)

(*c*) State principal objects according to Memorandum of Association.

3. The objects of the company are as follows (*c*) :—
and other objects set forth in the Memorandum of Association thereof.

4. The nominal capital of the company is Rs. divided into of which have been issued and are fully paid up or credited as fully paid up.

5. Shortly after its incorporation the company commenced to carry on and it has since been and still is carrying on business.

6. By article(s) of the Articles of Association of the company it is provided that the company may (set out Article or Articles of Association authorising a reduction of capital).

7. (Set out the reasons for reduction stating all material facts and circumstances).

8. Under the provisions of section 55 of the Indian Companies Act, 1913, and in pursuance of the powers in that behalf contained in the said Articles of Association the company by Special Resolution of its shareholders duly passed and confirmed at Extraordinary General Meetings duly convened and held on the day of 19 , and the day of 19 , respectively, resolved :—

(Set out the special resolution for reduction of capital.)

(*d*) Omit if creditors are entitled to object to the reduction.

9. (*d*) The reduction of capital does not involve either the diminution of liability in respect of unpaid capital or the payment to any shareholder of any paid up capital and in consequence no creditor is entitled to object to the reduction under the provisions of section 58 of the said Act.

10. (If the petition asks that the use of the words "and reduced" be dispensed with, here state reasons.)

11. The form of minute proposed to be registered under the provisions of section 61 of the said Act is as follows :—

(Set out proposed Minute of Reduction.)

(*e*) Omit or alter paragraphs (2) and (3) according to circumstances.

Your petitioners therefore humbly pray (*e*)—

(1) That the reduction of capital to be effected by the Special Resolution set out in paragraph 8 hereof be confirmed and that the minute set forth in paragraph 11 hereof be approved by the Court.

(2) That the addition of the words "and reduced" to the company's name be dispensed with.

(3) That the obtaining of the certificate provided for by Rule 29 of the Rules of this Honourable Court may be dispensed with and that in accordance with Rule 18 of the said Rules a day may be fixed for the hearing of this petition and directions given as to the advertisements to be published.

(4) That such other may be in the premises as to the Court shall seem fit.

Petitioners' Attorneys.

I, , of ,
make oath (or solemnly affirm) and say as follows :—

(1) That I am a (director) of the petitioner company and as such I am fully acquainted with the affairs of the said company.

(2) That the facts stated in the foregoing petition are true to my knowledge.
Sworn (or, solemnly affirmed), etc.

FORM No. 2 (Rule 18).

Advertisement of presentation of petition.

(Title.)

Notice is hereby given that a petition has been presented to the abovenamed Court for an order confirming the reduction of the share capital of the abovenamed company from Rs. to Rs. resolved on by the special resolution passed and confirmed at extraordinary general meeting of the said company, held respectively on the day of 19 , and the day of 19 .

The said petition is directed to be heard by the said Court at the Court house, Calcutta, on day, the day of 19 .

Attorney(s) for the company.

FORM No. 3 (Rule 19).

Order where creditors are entitled to object.

(Title.)

Upon the application by summons, dated 19 of Limited, and reduced, and upon hearing for the company and upon reading the petition presented to this Court on the day of 19 , and the affidavit in verification thereof, it is ordered that an enquiry be made as to what are the debts, claims and liabilities of or affecting the said company as on the day of 19 , and it is further ordered that a list of creditors of the said company be made out as at the said of day of 19 , and that such list shall (not) disclose the amounts due to the creditors respectively and that such list be filed by the said company in this Court on or before the day of 19 ; and that a copy of such list shall be kept at the registered office of the said company and at the office of its attorney ; and that notice of the said application shall be sent to each creditor on or before the day of 19 and that such notice in the cases of those creditors whose addresses are not within British India shall be given by (registered post or advertisement) and that such notices in the cases of those creditors whose addresses are not known to the said company shall be given by advertisements to be published in (*a*) ; and that any creditor whose name does not appear in such list or who claims to be a creditor for a larger amount than that stated in the said list shall give notice thereof in manner prescribed : *(b)* and send his name and address and particulars of his debt or claim and the name and address of his attorney if any to the attorney of the said company within (14) (*c*) days from the date of the said notice ; and that notice of the filing of the said list shall be advertised by the said company (*d*) ; and that the said company shall on or before the day of 19 file an affidavit verifying such list of creditors if any as may have given such notice (or, made such claim as aforesaid) distinguishing which if any of such claims are wholly or as to any and what part thereof admitted by the said company and which if any of such claims are wholly or as to any and what part thereof disputed by the said company.

(*a*) Specify publications.
(*b*) See Form 5 and Rule 23.
(*c*) Or as the Judge may allow. See Rule 24.
(*d*) Specify publications and any special directions given in regard thereto.

FORM No. 4 (Rule 21).

Affidavit in verification of list of creditors.

(Title.)

I, , of , make oath (or solemnly affirm) and say as follows :—

1. I am a (director) of the company abovenamed, and duly authorised to make this affidavit.

(a) Insert date fixed under Rule 19 with reference to which the claim is to be made out.

2. The schedule hereto annexed is a list containing the names of the creditors of and persons having claims upon the said company on the (a) day of 19 , together with their respective addresses, and stating the nature and amount of the debts or claims due to or had by them respectively and such list is, to the best of my knowledge, information and belief, a complete, true and accurate list of such creditors and persons, and in the cases of debts payable on a contingency or not ascertained, and of claims admissible to proof in a winding up of the said company, the values thereof as stated in such list, are, in my belief, just estimates of the values of such debts and claims respectively.

3. To the best of my knowledge, information and belief there was not, at the date aforesaid, any debt, claim or liability which, if such date were the commencement of the winding up of the said company, would be admissible in proof against the said company other than and except the debts and claims set forth in the said list. I make this statement upon facts within my knowledge as such (director) of the said company, and upon information derived by me from my investigation of the affairs and the books, documents and papers of the said company.

Sworn (or solemnly affirmed).

SCHEDULE.

(1) *Ascertained Debts and Liquidated Claims.*

Names, addresses and descriptions of the creditors or claimants. 1	Nature of debt or claim. 2	Amount of debt or claim. 3

(2) (a) *Debts Payable on a Contingency, or not Ascertained.*
(b) *Claims not Liquidated, but Admissible to Proof in a Winding up of the Company.*

Names, addresses and descriptions of the creditors or claimants. 1	Nature of debt or claim. 2	Estimated value or debt or claim. 3

(*Signature of deponent.*)

FORM No. 5 (Rule 23).

Notice to creditors.

(Title.)

Notice is hereby given that a petition has been presented to the abovenamed Court praying for an order confirming the reduction of the share capital of the abovenamed company from Rs. to Rs. resolved on by the special resolution passed and confirmed at extraordinary general meetings of the said company held respectively on the day of 19 , and the day of 19 .

Take notice that your name has been entered in the list of creditors of the said company as a creditor (or, as claiming to be a creditor) of the said company for the sum (or, for the estimated sum) of Rs. in respect of (here state nature of debt or claim as in list of creditors).

If you claim to be a creditor for a larger amount than the said sum, you must within (a) (14) days from the date of this notice send to the undersigned particulars of your debt or claim, together with your name and address, as also the name and address of your attorney, if any.

(a) Or as the Judge may allow. See Rule 24.

Attorney(s) for the company.

Dated 19 .

FORM No. 6 (Rule 24).

Advertisement of list of creditors.

(Title.)

Notice is hereby given that a list of the creditors of the abovenamed company has been filed in Court. Any person may, upon payment of the sum of Re 1, inspect a copy of such list during the usual hours of business, either at the registered office of the abovenamed company, at No. or at the office of the undersigned.

Attorney(s) for the company abovenamed.

Dated 19 .

FORM No. 7 (Rule 26).

Affidavit in verification of list of creditors.

(Title.)

We, , of and of make oath (or, solemnly affirm) and say as follows :—

1. I, the said , make oath (or solemnly affirm) and say as follows :—

I am the attorney (or a partner, or an assistant of Messrs. , the attorneys) of the company abovenamed. The annexure, hereto, marked "A" is a list containing the names and addresses of all persons who have sent in particulars of their debts or claims in pursuance of notice given in accordance with Rule 23, and the amounts of such debts or claims (or, no creditor has sent in particulars of any debt or claim in pursuance of notice given in accordance with Rule 23).

2. And I, the said , make oath (or solemnly affirm) and say as follows :—

I am a (director) of the company abovenamed. Notice complying in all respects with the requirements of Rule 23 has been duly given to all the creditors whose names are entered in the list of creditors of the company abovenamed filed in Court.

In the cases of notices sent by prepaid letter post, such notices were despatched by posting the same at the post office at on the day of 19 , before the hour of .

In the cases of notices directed by the Court to be given otherwise than by sending the same by post, such notices were given in the manner directed, namely,—

[Here state particulars (a).]

In the said annexure "A" I have truly stated the particulars required by Rule 26 in respect of each of the debts or claims therein mentioned.

Sworn (or solemnly affirmed), etc.

(a) If by advertisement, state names of publications and dates of publication.

FORM No. 8 (Rule 27).

Notice to creditor to prove debt.

(Title.)

Sir,

(Place and date.)

You are hereby required to prove (such part of) the debt claimed by you against the abovenamed company (as is not admitted by the company) by filing your affidavit and giving notice thereof to of the attorney of the company on

(a) Insert the day appointed for adjudication.

or before the day of 19 (a) and you are to attend in person or by your attorney at the Court-house, Calcutta, on the said date being the date appointed for hearing and adjudicating upon the claim and to produce any documents or securities relating thereto.

In default of compliance with the above directions you will be precluded from objecting to the proposed reduction of the capital of the company (or, in all proceedings relative to the proposed reduction of the capital of the company be treated as a creditor for such amount only as is set against your name in the list of creditors).

Attorney(s) for the said company.

FORM No. 9 (Rule 27).

Affidavit of creditor in proof of debt.

(Title.)

I, , of , make oath (or solemnly affirm) and say as follows :—

1. (If not made by the creditor personally, the deponent must state his authority for making the affidavit and his means of knowledge.)

2. The abovenamed company is justly and truly indebted to me (or the said) in the sum of Rs. for etc. (describe shortly the nature of the debt and exhibit any security for it and in the case of a trade debt exhibit vouchers).

3. I have not nor has nor have any person or persons by my order or to my knowledge or belief for my use received the said sum of Rs. or any part thereof or any security or satisfaction for the same or any part thereof (except the said security hereinbefore referred to) (a)

(a) This paragraph to be adapted in the case of a person other than the creditor being the deponent.

Sworn (or solemnly affirmed) etc.

FORM No. 10 (Rule 31).

Notice of the day appointed to hear the petition for reduction of capital.

(Title.)

Notice is hereby given that a petition presented to the said Court on the day of 19 for an order confirming the reduction of the capital of the company from Rs. to Rs. is directed to be heard by the said Court on the day of 19 .

Attorney(s) for the company.

FORM No. 11 (Rule 51).

Petition.

(Title.)

(a) Insert full name, address, description, etc, of petitioner.

The humble petition of (a)

Sheweth—

1. The , Limited (hereinafter called the company) is a company duly incorporated under the Indian Companies Act.

(b) State the full address of the registered office.

2. The registered office of the company is at (b)

3. The nominal capital of the company is Rs. divided into shares of Rs. each. The amount of the capital paid up or credited as paid is Rs.

(c) State principal objects according to Memorandum of Association.

4. The objects of the company are as follows (c) :—and the other objects set forth in the Memorandum of Association thereof.

5. (Here set out in numbered paragraphs the facts on which the petitioner relies and in the case of an application for a supervision order the date of the winding up resolution and the appointment of Liquidator and conclude as follows :—

Your petitioner therefore humbly prays as follows :—

(d) Or under the supervision of the Court.

(1) That , Limited, may be wound up by the Court (d) under the provisions of India Companies Act, 1913.

(2) Or that such other order may be made in the premises as shall be just.

(e) This note will be unnecessary if the company is petitioner.

Note—(e) It is intended to serve this petition on

FORM No. 12 (Rule 51).

Petition by unpaid creditor.

(Title.)

Paragraphs 1, 2, 3 and 4 as in Form No. 11.

(f) State consideration for the debt, with particulars so as to establish that the debt is due.

5. The company is indebted to your petitioner in the sum of Rs. for (f)

6. On the day of 19 your petitioner served (or, caused to be served by A. B. of) on the company by leaving the same at its registered office a demand under his hand in the words and figures following :—

(Set out demand in full).

7. The company has neglected to pay the said sum of Rs. or to secure or compound for it to the reasonable satisfaction of your petitioner.

8. The company is (insolvent and) unable to pay its debts.

9. In the circumstances it is just and equitable that the company should be wound up.

Your petitioner, therefore, etc. (as in Form No. 11).

FORM No. 13 (Rule 52).

Affidavit verifying petition.

(Title.)

I, *A. B.*, of , etc., make oath (or, solemnly affirm) and say, that the statements in paragraphs Nos. in the petition now produced and shown to me, and marked with the letter A, are true to my knowledge, and the statements in paragraphs Nos. in the said petition are based on information received (state source of information) which I believe to be true. The statements contained in paragraphs 1, 2, 3 and 4 of the said petition are matters of record.

Sworn (or solemnly affirmed), etc.

FORM No. 14 (Rule 54).

Advertisement of petition.

(Title.)

Notice is hereby given that a petition for the winding up of the abovenamed company by the (or subject to the supervision of the) High Court of Judicature at Fort William in Bengal (or District Court of) was on the day of 19 presented to the said Court by the said company (or C. *D.* of a creditor or contributory of the said company as the case may be) and that the said petition is directed to be heard before the Court on the day of 19 ; and any creditor or contributory of the said company desirous of opposing an order for the winding up of the said company under the above Act should appear at the time of hearing by himself or his Attorney or Advocate for that purpose ; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same, by the undersigned, on payment of the prescribed charge for the same.

A. B.,

(*Attorneys for the petitioners*).

(Address).

Dated 19 .

Note.—Rule 58 * provides that any person who intends to appear on the hearing of the said petition must serve on or send by post to the abovenamed, notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be served, or if posted, must be sent by post in sufficient time to reach the abovenamed not later than 2 clear days before the day of 19 .

FORM No. 15 (Rule 56).

Affidavit of service of petition on officer, or servant of the company.

(Title.)

In the matter of a petition, dated

I, , of , make oath (or solemnly affirm) and say :—

(*a*) In the case of service of petition on a company by leaving with an officer or servant at the registered office or if no registered office, at the principal or last known principal office of the company.

1. (*a*) That I did on day, the day of 19 , serve the abovenamed company with the abovementioned petition by delivering to and leaving with (name and description) an officer (or servant) of the said company a copy of the abovementioned petition and a copy of the order made under Rule 53, at (registered office or principal office as aforesaid).

or

---

* In the Note to Form No. 14 "58" has been substituted for "57" by Notification in the Calcutta Gazette of 18th July, 1940, Part I, p. 1972.

(*b*) In the case of no officer or servant of the company being found at the registered office or principal or last known principal office of the company by sending through registered post.

1. (*b*) That I did on day, the day of 19 , having failed to find any officer, or servant, of the abovenamed company at (here state registered office or principal or last known principal office) send by registered post a copy of the abovementioned petition and a copy of the order under Rule 53 addressed to the company at its registered (or principal or last known principal) office (as the case may be).

or

(*c*) In the case of the company having its registered or principal or last known principal office outside the Original Civil Jurisdiction of the Court by sending through registered post.

1. (*c*) That I did on day, the day of 16 , the abovenamed company having its registered (or principal or last known principal) office outside the Original Civil Jurisdiction of this Court, send by registered post a copy of the abovementioned petition and a copy of the order made under Rule 53 addressed to the abovenamed company at its registered (or principal or last known principal) office aforesaid (as the case may be).

(*d*) In the case of directions having been given by the Court as to other persons to be served.

2. (*d*) That I did on day, the day of 19 , serve (name or names and description) with a copy of the abovementioned petition, by delivering the same personally to the said at (place).

Sworn (or solemnly affirmed), etc.

FORM No. 16 (Rule 56).

Affidavit of service of petition on liquidator.

(Title.)

In the matter of a petition, dated 19 , for winding up the above company (by) or (under the supervision of) the Court (as the case may be).

I, , of , make oath and say :—

That I did, on day, the day of 19 , serve (name and description) the Liquidator of the abovenamed company, with a copy of the abovementioned petition and a copy of the order made under Rule 53 by delivering the same personally to the said at (place).

Sworn (or, solemnly affirmed), etc.

FORM No. 17 (Rule 58).

Notice of intention to appear on petition.

(Title.)

(*a*) State full name or if a firm, the name of the firm and address.

(*b*) State number and class of shares held.

(c) To be signed by the person or his attorney.

Take notice that A. B., of (*a*) , a creditor for Rs. of [or contributory holding (*b*) shares in] the above company intends to appear on the hearing of the petition advertised to be heard on the day of 19 , and to support (or oppose) such petition.

Signed (c) (Name of person or firm).
(Address)
(Date)

To

(Attorneys for petitioner).

FORM No. 18 (Rule 65).

Notice of winding up order to Registrar of Companies.

(Title.)

To

The Registrar of Companies, Bengal.

Take notice that by an order of the High Court of Judicature at Fort William in Bengal (or District Court of) made on the day of 19 , , Limited, was ordered to be wound up by the Court (or under the supervision of the Court.)

Signed (Petitioner or his Attorney.)
(Address)
(Date)

FORM No. 19 (Rule 66).

Order for winding up by the Court.

(Title.)

(*a*) Omit if no Provisional Liquidator is appointed at the time of making the winding up order.

Upon the petition of (the abovenamed company or A. B. of etc., a creditor or contributory of the abovenamed company) filed on the day of 19 , and presented to the said Court, and upon hearing for the petitioner and for and upon reading the said petition (an affidavit of the said petitioner filed, etc., verifying the said petition, an affidavit of S.M. filed on the day of 19 , as to advertisement of the said petition) this Court doth order that the said company be wound up by this Court under the provisions of the Indian Companies Act, 1913, (*a*) and that be appointed Provisional Liquidator of the affairs of the Company.

FORM No. 20 (Rule 66).

Order for winding up, subject to supervision.

(Title.)

Upon the petition, etc. (as in Form No. 19), this Court doth order that the voluntary winding up of the said Limited, be continued, but subject to the supervision of this Court, and any of the proceedings under the said voluntary winding up may be adopted as the Court shall think fit; and it is ordered that the Liquidator appointed in the voluntary winding up of the said company, do on the day of next, and thenceforth every months file with the Registrar a report in writing as to the position of, and the progress made with, the winding up of the said company and with the realization of the assets thereof, and as to any other matters connected with the winding up as the Court may from time to time direct. And the creditors, contributories, and Liquidator of the said company and all other persons interested, are to be at liberty to apply generally as there may be occasion.

FORM No. 21 (Rule 68).

Advertisement of order to wind up.

(Title.)

By an order by the High Court of Judicature at Fort William in Bengal (or District Court of) in the above matter, dated the day of 19 , on the petition of the abovenamed company (or *A.B.* of) it was ordered that (etc., as in Form 19 or 20.)

C and D.

(Attorneys for the said petitioner.)

Dated the day of 19 .

FORM No. 22 (Rule 73).

Order for appointment of a Provisional Liquidator.

(Title.)

Upon the application of and upon reading the Court doth hereby appoint of to be the Provisional Liquidator of the abovenamed company, And the Court doth hereby limit and restrict the powers of the said as such Liquidator to the following acts (describe the acts which the Liquidator is authorised to do and the property of which he is to take possession). And the Court doth hereby fix the remuneration of the said as such Liquidator at (set out particulars of remuneration (*a*). And it is ordered that the said do on or before the day of next furnish security in the sum of Rs. to the satisfaction of the Registrar of the said Court.

(*a*) If security ordered to be furnished add.

FORM No. 23 (Rule 77).

Advertisement as to appointment of Official Liquidator.

(Title)

Notice is hereby given that the day of 19 , at o'clock in the noon at the Court-house at Calcutta (or at the District Court-house at) has been fixed as the time and place for the appointment of an Official Liquidator of the abovenamed company.

(Attorneys for the Petitioner).

(Address).

Dated 19 .

FORM No. 24 (Rule 78).

Form of Nomination of Official Liquidator.

(Title)

We, the undersigned (creditors or contributories) of the abovenamed company for the (debt or number of shares) placed opposite our respective names hereby nominate of etc., to be the Official Liquidator of the said company who is prepared and by his signature hereto undertakes to furnish security in the sum of Rs. or such less sum as may be ordered by the Court.

Name. 1	Address. 2	Creditor or contributory. 3	Amount of debt. 4	Number of shares held. 5
			Rs. a. p.	

Signed *(Nominator)*...

Signed *(Nominee)*...

Dated 19 .

FORM No. 25 (Rule 85).

Order appointing an Official Liquidator.

(Title)

Upon the application of and upon reading and upon hearing the Court doth hereby appoint of (*a*) (and of with joint and several powers) to be Official Liquidator(s) of the abovenamed company. And it is ordered that the said do on or before the day of next furnish security in the sum of Rs. to the satisfaction of the Registrar of the said Court (or without security). And it is ordered that the said on the day of and the day of 19 and on the same days in each succeeding year file his (or their) accounts of receipts and payments in the office of the Registrar (or in the District Court at). And it is ordered that the said be at liberty to open, operate upon and maintain in his own name as such Official Liquidator as aforesaid a banking account with the (*b*) Bank at its Head office (or Branch). And it is ordered that all moneys to be received by the said be paid by him (or them) into the (*b*) at its Head Office (or Branch) (or into the District Court at) to the credit of the account of the Official Liquidator(s) of the said company within 7 days after the receipt thereof and that out of the said account all payment shall be made by cheque signed by the said as such Official Liquidator as aforesaid and countersigned by the Registrar (*c*).

(*a*) If more than one person be appointed and the Court so directs.

(*b*) Insert name of a scheduled bank.

(*c*) As to dispensing with counter signature. See Rule 93.

FORM No. 26 (Rule 87).

Advertisement of appointment of Official Liquidator.

(Title)

Notice is hereby given that of by an order, dated the day of 19 , has been appointed Official Liquidator of the above-mentioned company (*a*) with joint and several powers.

(*a*) If more than one person appointed add.

(Signed) (*Attorney for the Petitioner.*)

Dated this day of 19 .

FORM No. 27 (Rule 80)

Security Bond by Official Liquidator and a Guarantee Society.

Know all men by these presents that I/we (name of the Official Liquidator or Liquidators his or their description and address) and we (name of the Guarantee Society) carrying on the business in Calcutta at (place of business) through (name of the Guarantee Society's Agent) hereinafter called the Society are jointly and severally held and firmly bound unto (name of the Registrar, Original Side), Esquire, Registrar of the High Court of Judicature at Fort William in Bengal in its Ordinary Original Civil Jurisdiction (or name of the Judge) Esquire, Judge of the District Court of his successor or successors in office and assigns in the sum of Rs. of lawful money of British India to be paid to the said (name of the Registrar, Original Side) Esquire (or name of the Judge) Esquire his successor or successors in office or assigns as the case may be, for which payment well and truly to be made I/we the said (name of the Official Liquidator or Liquidators) for myself (ourselves) my (our) heirs, executors, administrators, and representatives and every one of them and we, the Society, for ourselves and our successors do hereby bind and oblige ourselves for the whole firmly by these presents, and we the Society, do hereby submit ourselves to the Jurisdiction of the said High Court (or District Court): and appoint (piace of business of the Agents) aforesaid as the address for service of all writs, proceedings or notices that may be issued taken or given with reference to the conditions of this Bond or with respect to the liability of the said (name of the Official Lipuidator or Liquidators) thereunder. Signed, Sealed and Delivered by the said (name of the Official Liquidator or Liquidators) and sealed with the seal of the said Society. Dated this day of one thousand nine hundred and

Whereas by an order, dated the day of one thousand nine hundred and made by the said High Court (or District Court) in the matter of the Indian Companies Act VII of 1913 and in the matter of (name of the Company) the said (name of the Official Liquidator or Liquidators) was (were) appointed the Official Liquidator or Liquidator(s) of the said Company and he (they) was (were) thereby directed to give security for Rs. to be approved of by the said Registrar (or Jugde of the District Court), And whereas the said (name of the Official Liquidator or Liquidators) has (have) proposed and the said Registrar (or Judge of the District Court) has under the Rules of the said High Court accepted the said Society as surety for the said (name of the Official Liquidator or Liquidators).

Now the condition of the above written Bond or Obligation is such that if the said (name of the Official Liquidator or Liquidators) or his (their) executors or administrators or some or one of them do and shall duly account for all and every the sum or sums of money or other property which the said (name of the Official Liquidrtor or Liquidators) has (have) received and shall receive or has (have) or shall become or be held liable to pay or account for as such Officiai Liquidator(s) as aforesaid and do and shall pay or deliver the same as the Court or a Judge hath directed or shall hereafter direct and shall give immediate notice to the Court if the said Society shall become insolvent, or go into liquidation and do and shall from time to time and at all times hereafter so long as he (they) shall continue as such Official Liquidator(s) duly and faithfully in all respects discharge the duties and obligations which shall devolve upon him (them) as Official Liquidator(s) as aforesaid and file and pass his (their) account(s) before a Judge at the said Court at the times and in the manner required by the Rules of the said Court or as the Court or a Judge may direct and obey and carry out all other directions contained in the said order and all other orders which may hereafter be made by the said High Court (or District Court) in the premises; then the above written Bond or Obligation shall be void, otherwise the same shall remain in full force and virtue.

Signed, Sealed and Delivered by the said (name of the Official Liquidator or Liquidators) at Calcutta in the presence of

The Seal of the Society was hereunto affixed in the presence of

Signed for and on behalf of the Society.

FORM No. 28 (Rule 80)

Security Bond by Official Liquidator and Surety other than Guarantee Society.

Know all men by these Presents that I (we) [name of the Official Liquidator(s) his or their description and address] and I (we) [name(s) of the Surety or Sureties his or their description(s) and address(es) are jointly and severally held and firmly bound unto (name of the Registrar, Original Side) Esquire, Registrar of the High Court of Judicature at Fort William in Bengal in its Ordinary Original Civil Jurisdiction (or name of the Judge) Esquire, Judge of the District Court of , his successor or successors in office and assigns in the sum of Rs. of lawful money of British India to be paid to the said [name of the Registrar, Original Side) Esquire, (or name of the Judge), Esquire his successor or successors in office or assigns as the case may be, for which payment well and truly to be made, we the said [name of the Official Liquidator(s) and Surety or Sureties] for ourselves, our heirs, executors, administrators and representatives and every one of them do hereby bind and oblige ourselves for the whole firmly by these presents. Signed, Sealed and Delivered by the said [name of the Official Liquidator(s) and Surety or Sureties].

Dated this day of one thousand nine hundred and .

Whereas by an order, dated the day of one thousand nine hundred and made by the said High Court (or District Court of) in the matter of the Indian Companies Act VII of 1913 and in the matter of (name of the Company) the said [name of the Official Liquidator(s)] was (were) appointed the Official Liquidator(s) of the said Company and he (they) was (were) thereby directed to give security for Rs. to be approved by the said Registrar (or the Judge of the said Court). And whereas the said [name of the Official Liquidator(s)] has (have) proposed and the said Registrar has accepted the said (name of the Surety or Sureties) as Surety (Sureties) for the said (name of the Official Liquidator(s)).

Now the condition of the above written Bond or Obligation is such that if the said [name of the Official Liquidator(s)] or his (their) executors or administrators or some or one of them do and shall duly account for all and every the sum and sums of money or other property which the said [name of the Official Liquidator(s) has (have) received and shall receive or has (have) or shall become or be liable to pay or account for as such Official Liquidator(s) as aforesaid and do and shall pay or deliver the same as the Court or a Judge hath directed or shall hereafter direct and do and shall from time to time and at all times hereafter so long as he (they) shall continue as such Official Liquidator(s) duly and faithfully in all respects discharge the duties and obligations which shall devolve upon him (them) as Official Liquidator(s) as aforesaid and file and pass his (their) accounts before a Judge of the said Court at the times and in the manner required by the Rules of the said Court or as the Court or a Judge may direct and obey and carry out all other the directions contained in the said order and all other orders which may hereafter be made, the above written Bond or Obligation shall be void, otherwise the same shall remain in full force and virtue.

Signed, Sealed and Delivered at Calcutta in the presence of

FORM No. 29 (Rule 80).

Affidavit by Sureties.

(Title).

We, , of , etc., and of etc., severally make oath (or solemnly affirm) and say as follows:—

1. I, the said for myself say that I am worth (*a*), the sum of Rs. of lawful money of British India over and above what is sufficient for the payment of all my just debts and liabilities.

(*a*) Particulars of property to be specified if required by the Registrar.

2. And, I the said , for myself say that I am worth the sum of Rs. of, etc. (as above).

Sworn, etc.

FORM No. 30 (Rule 81).

Certificate that Official Liquidator has given Security.

(Title.)

This is to certify that of who was on the day of 19 , appointed Official Liquidator of the abovenamed company, has duly given security as ordered by the Court.

J. S.
(Signed) *Registrar.*

Dated this *day of* 19 .

FORM No. 32 (Rule 97).

Request to invest cash in Government Securities.

(Title.)

To
(Name of bank.)

Sir,

It appearing that the sum of Rs. is standing to the credit of the account of the Official Liquidator of the abovenamed company, you are hereby requested to invest the sum of Rs. being part thereof, in the purchase of (here insert the description of the Government security intended to be purchased) in the name of of the Official Liquidator of the said company and to retain such Government securities on behalf of the Official Liquidator. The said securities are not to be sold, transferred, or otherwise dealt with, except upon a direction for that purpose signed by the Official Liquidator of the said company and countersigned by the Registrar (or by the Judge of the District Court of or under an order to be made by the said Judge.)

I am,
Sir,
Your most obedient servant,
Official Liquidator.

Dated *day of* 19 .

FORM No. 33 (Rules 86 and 245).

Liquidator's statement of Account (a).

(*a*) When filed under Rule 245 this statement must be filed in duplicate.

(Title.)

1. (Name of the company.)

2. (Nature of proceeding whether wound up by the Court, or under the supervision of the Court, or voluntary.)

3. (Date of commencement of winding up.)
4. (Name and address of Liquidator.)

Realizations.				Disbursements.			
Date.	Of whom received.	Nature of assets realised.	Amount.	Date.	To whom paid.	Nature of disbursements.	Account.
1	2	3	4	5	6	7	8
		(b) From Trading Account.	Rs. a. p.			(b) From Trading Account.	Rs. a. p.

(b) If Trading Account authorised total to be inserted and detailed receipts and payments account to be attached.

Analysis of Balance.

	Rs. a. p.
Total realizations	
Total disbursements	
Balance ...	

The balance is made up as follows :—

	Rs. a. p.
(1) Cash in the hands of Liquidator	
(2) Total payments into bank, including balance at date of commencement of winding up (as per Bank Book)	
Total withdrawal from bank	
Balance at bank	
(3) Amounts invested by Liquidator— *Less*—Amount realised from same ...	
Balance ...	
Total balance as shown above ...	

Note.—Full details of stock purchased for investment and of realisations thereof should be given in a separate statement.

Note.—The Liquidator should also state—

(1) The amount of the assets and liabilities at the date of the commencement of the winding up according to the Liquidator's estimate.

(2) The total amount of the capital paid up at the date of commencement of the winding up.

(3) The general description and estimated value of outstanding assets (if any).

(4) The cause which delayed the termination of the winding up.

(5) The period within which the winding up may probably be completed.

	Rs.
Assets (after deducting amounts charged to secured creditors) ...	
Debenture-holders ...	
Liabilities—	
Secured creditors	
Debenture-holders	
Unsecured creditors	
Paid up in cash ...	
Issued as paid up otherwise than for cash.	

Note.—If no receipts or payments, the portion of the form under the headings "Realisation," "Disbursements" should be omitted.

FORM No. 34 (Rules 86 and 245).

Affidavit verifying Liquidator's Account.

(Title.)

I, , of , the (Official) Liquidator of the abovenamed company, make oath and say :—

That (the account hereunto annexed and marked "A" contains a full and true account of my receipts and payments in the winding up of the abovenamed company) from the day of 19 , to the day of 19 , inclusive (and that) I have not nor has any other person by my order, or, for my use during such period, received or paid any moneys on account of the said company (other than and except the items mentioned and specified in the said account).

I further say that the particulars in the annexed account marked "A," with respect to the proceedings in and position of the liquidation, are true to the best of my knowledge and belief.

Sworn or solemnly affirmed), etc.

If no receipts or payments the words in brackets should be omitted.

FORM No. 35A (Rule 47).

In the matter of the Indian Companies Act

And

In the matter of the , Ltd.,

Upon reading on the part of the abovenamed company a petition and the exhibits thereunto annexed verified by an affidavit of affirmed on the and filed this day and upon hearing for the applicants. It is ordered that the applicants do convene a meeting of the creditors and/or members of the abovenamed company such meeting to be held at the registered office of the company at on at o'clock in the afternoon for the purpose of considering and if thought fit approving with or without modifications a Scheme of Arrangement proposed to be made between the company and its said creditors and/or members. And it is further ordered that at least one week before the date appointed for such meeting advertisements convening the same stating that a copy of the Scheme of Arrangement may be seen at the office of the Solicitors of the applicants be inserted as follows : once in the and once in the . And it is further ordered that at least 10 days before the date appointed for such meeting circular letters to the same effect together with proper form of proxy and a copy of the proposed Scheme be sent under certificates of posting to each of the said creditors and/or members at their addresses as recorded in the books of the company and this Court doth hereby appoint and failing him as Chairman of the said meeting. And it is further ordered that the said Chairman do report the result of the said meeting to this Court. And it is further ordered that the applicants do bear and pay their own costs of this application to be taxed, if necessary, by the Taxing Officer of this Court as between attorney and client.

Witness, etc.

FORM No. 35B (Rule 47).

In the matter of the Indian Companies Act

And

In the matter of Limited.

Upon reading on the part of the abovenamed company its petition verified by an affidavit of affirmed on the and the exhibits annexed thereto marked respectively A, B and C and an affidavit of as to due advertisement and service of the notice affirmed on the and the exhibits annexed thereto marked respectively A, B and C all filed on the and the report of the Chairman appointed to preside over the meeting and upon reading on the part of creditors of the abovenamed company their joint affidavit affirmed on the and filed on the and upon reading the order made herein and dated whereby the company was directed to convene a meeting of its creditors and/or members for the purpose of considering and if thought fit approving with or without modification a Scheme of Arrangement proposed to be made between the said company and its creditors and/or members and upon hearing advocate for the said company and Mr. advocate for the said creditors supporting the said application.

It is ordered that this Court doth hereby sanction the Scheme of Arrangement as modified by the creditors and/or members at their meeting held on the and as set forth in Annexure "B" to the said petition (a copy whereof is hereunder written) and doth hereby declare the same to be binding on the creditors and/or members of the company and on the said company. And it is further ordered that the company do file an office copy of this order with the Registrar of Joint Stock Companies, Bengal, within fifteen days from the same being filed. And it is further ordered that the costs of the parties appearing of and incidental to this application (including fees to Counsel) to be taxed by the Taxing Officer of this Court be paid by the said company out of its assets.

Witness etc.

FORM No. 36 (Rule 123).

Advertisement for Creditors.

(Title.)

The creditors of the abovenamed company are required on or before the day of 19 , to send their names and addresses and the particulars of their debts or claims and the names and addresses of their attorneys (if any) to of the Official Liquidator of the said company, and, if so required by notice in writing from the Official Liquidator, shall, either in person or by their attorneys, prove their said debts or claims at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved. The day of 19 , at o'clock in the noon at the said is appointed for the investigation of debts and claims.

Official Liquidator.

Dated this day of 19 .

FORM No. 37 (Rule 128).

Notice to creditors to prove their debts before the Official Liquidator.

(Title).

(Address and date).

Sir,

You are hereby required to prove the debt claimed by you against the abovenamed company, by filing your affidavit, and giving notice thereof to me on or before the day of next, and you are to attend at my office in person or by your attorney on the day of 19 at o'clock in the noon, being the time appointed for the investigation of the claim.

Official Liquidator.

Dated this day of 19 .

To

(Name of creditor).

(Address).

FORM No. 38 (Rule 129).

Affidavit of creditor in proof of debt.

(Title).

I, , of make oath (or solemnly affirm) and say as follows :—

1. (If not made by the creditor personally, the deponent must state his authority for making the affidavit and his means of knowledge).

(*a*) date of the winding up order.

2. The abovenamed company was on the (*a*) day of 19 , and still is justly and truly indebted to me (or the said) in the sum of Rs. for , etc. (Describe shortly the nature of the debt and exhibit any security held and in case of a trade debt exhibit vouchers.)

(*b*) This paragraph to be adapted in the case of a person other than the creditor being the deponent.

3. (*b*) I have not nor has nor have any person or persons by my order or to my knowledge or belief for my use, received the sum of Rs. or any part thereof, or any security or satisfaction for the same or any part thereof [except the said (security) hereinbefore referred to].

Sworn (or solemnly affirmed), etc.

FORM No. 39 (Rule 132).

Affidavit of Official Liquidator as to Debts and Claims.

(Title.)

I, , of , the Official Liquidator of the abovenamed company make oath (or solemnly affirm) and say as follows :—

1. I have, by the paper hereto annexed and marked with the letter A, set forth a list of all the debts and claims, the particulars of which have been sent to me by persons making claim upon or claiming to be creditors of the said company, pursuant to the advertisement issued in that behalf, dated the day of 19 , and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims and examined the same with the books and documents of the said company in order to ascertain to the best of my ability, which of such debts and claims are justly due from the said company; and I have, in the first part of the said list, set forth such of the said debts and claims or parts thereof, as in my opinion are justly due from the said company, and proper to be allowed without further evidence and I have, in the sixth column of the said first part of the said list, set forth the amount proper to be allowed in respect of such debts, and claims; and I believe that such amounts respectively, are justly due and proper to be allowed; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn (or solemnly affirmed), etc.

Exhibit A referred to in the affidavit of sworn (or solemnly affirmed) before me this day of 19 .

(Signed).

LIST OF DEBTS AND CLAIMS OF WHICH THE PARTICULARS HAVE BEEN SENT TO THE OFFICIAL LIQUIDATOR.

(First Part.)

Debts and claims which ought to be allowed without further evidence.

Serial number. 1	Name of creditors. 2	Address and description. 3	Particulars of debt or claim. 4	Amount claimed. 5	Amount proper to be allowed. 6	Reasons for belief that amounts are proper to be allowed. 7
				Rs. a. p.	Rs. a. p.	

(Second Part.)

Debts and claims which ought to be proved by the creditors.

Serial number. 1	Number of creditors. 2	Address and description. 3	Particulars of debts or claims. 4	Amount claimed. 5
				Rs. a. p.

FORM No. 40 (Rule 132).

Notice to creditors to prove as much of their debts as is not admitted before the Judge.

(Title.)

You are hereby required to prove before the Judge the debt/Rs. out of the debt claimed by you against the abovenamed company. You are accordingly required to attend in person or by your attorney or advocate at the Court House on the day of 19 , at o'clock in the forenoon, being the time appointed for hearing and adjudicating upon the claim.

(Where the claim is admitted in part).

Particulars identifying the part of the claim rejected.

....

Official Liquidator.

Dated this *day of* 19 .

To

....

(Name of creditors).

....

(Address).

FORM No. 41 (Rule 135).

Certificate as to settlement of list of debts and claims.

(Title.)

The debts and claims which have been allowed are set forth in the first schedule hereto, and (with the interest thereon and costs mentioned in the schedule) are due to the persons therein named.

In the first part of the said schedule are set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry, down to date of the winding up.

In the second part of the said schedule are set forth such of the debts and claims as do not carry interest.

The claims set forth in the second schedule hereto have been disallowed.

THE FIRST SCHEDULE ABOVE REFERRED TO·

(First Part.)

Debts and claims which carry interest.

Serial number. 1	Names of creditors. 2	Addresses and descriptions. 3	Particulars of debt. 4	Total amount. 5
				Rs. a. p.
			On bills of exchange, dated, etc.	
			Principal	
			Interest at per cent. per annum from to the date of commencement of the winding up.	
			Cost of proof.	

(Second Part.)

Debts and claims which do not carry interest.

Serial number. 1	Names of creditors. 2	Addresses and descriptions. 3	Particulars of debts. 4	Interest on principal. 5	Total due. 6
				Rs. a. p.	Rs. a. p.
			Goods sold		
			Cost of proof	....	
				....	

Advocate High Court
Jammu & Kashmir
Srinagar.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Serial number. 1	Names of creditors. 2	Addresses and descriptions. 3	Particulars of claims. 4	Amount claimed. 5

Signature of the Judge or (District Judge).

Dated this *day of* 19 .

FORM No. 42 (Rule 141).

Notice of preliminary settlement of the list of contributories.

(Title.)

(Address).

(Date).

Take notice that I have appointed the day of 19 at o'clock in the forenoon at (the above address) for the preliminary settlement of the list of contributories of the abovenamed company.

According to the books of the company you will be included in such list for the number of shares stated below. If you object to such inclusion you should attend in person or by your attorney at the time and place stated above when your objections will be heard and considered.

Official Liquidator.

Number on list.	Name.	Address.	Description.	In what character included.	Number of shares or extent of interest.

FORM No. 43 (Rule 142)

Preliminary list of contributories made out by the Official Liquidator.

(Title.)

The following is a list of members of the company liable to be placed on the list of contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses and the number of shares (or extent of interest) to be attributed to each, so far as I have been able to ascertain the same.

In the first part of the list, the persons who are contributories in their own right are distinguished.

In the second part of the said list, the persons who are contributories as being representatives of, or being liable for the debts of others, are distinguished.

(First Part.)

Contributories in their own right.

Serial No. 1	Name. 2	Address. 3	Description. 4	Number of shares (or extent of interest). 5	Remarks. 6

(Second Part.)

Contributories as being representives of or liable for the debts of others.

Serial No. 1	Name. 2	Address. 3	Description. 4	In what character included. 5	Number of shares (or extent of interest). 6	Remarks. 7

Dated the day of 19 .

Official Liquidator.

FORM No. 44 (Rule 143.)

Notice to contributories of settlement of list of contributories by the Judge.

(Title).

(Address.

(Date.)

Notice is hereby given that the day of 19 , at o'clock in the forenoon at the Court-house, Calcutta (for at the District Court), has been fixed for the settlement of the list of contributories of the abovenamed company made out and filed in Court by the Official Liquidator and you are included in such list in the character and for the number of shares or extent of interest stated below : and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled by the Judge, including you therein.

Unless the Judge shall otherwise direct no application for any variation of the list will be entertained after the day so appointed.

Official Liquidator.

Number on list. 1	Name. 2	Address. 3	Description. 4	In what character included. 5	Number of shares or extent of interest. 6

FORM No. 45 (Rule 144).

Endorsement by Judge on settlement of List of Contributories.

(Title.)

List settled as filed (except that Nos. are expunged from the list and Nos. stand over for determination and subsequent endorsement hereon).

Judge.

Dated the day of 19 .

FORM No. 46 (Rule 149).

Petition for leave to make a call.

(Title.)

The humble petition of Official Liquidator of the abovenamed company, sheweth as follows :—

1. The abovenamed company was by an order of this Court, dated the day of 19 , ordered to be wound up by this Court (or under the supervision of this Court).

2. By an order of this Court, dated the day of 19 , I was appointed Official Liquidator.

3. On the day of 19 , the list of contributories of the said company was settled by the Honourable Mr. Justice (or Esq., District Judge of).

4. The amount of the debts proved and admitted against the said company and the estimated amount of the costs charged and expenses of the winding up aggregate the sum of Rs. or thereabouts.

5. Of the assets set forth in the statement of assets I have realised the sum of Rs. of which I still have in hand the sum of Rs. I estimate that the assets still remaining to be collected will realise approximately Rs. There are no other assets belonging to the said company except the amounts due from contributories.

6. In the settled list of contributories of the said company appear the names of persons in respect of shares.

7. For the purpose of satisfying the debts and liabilities of the company and of paying the costs, charges and expenses of the winding up I believe the sum of Rs. will be required in addition to the amount I now have in hand and the amount still to be collected by realisation of the outstanding assets.

8. In order to provide the said sum of Rs. it is necessary to make a call upon the several persons who have been settled on the list of contributories and to provide for the contingency of some of such contributories partly or wholly failing to pay the amount of such call I believe that for the purpose of realising the said amount required it is necessary that a call of Rs. per share be made.

Your petitioner therefore humbly prays as follows :—

(*a*) Or as the case may be.

(1) That leave be given to your petitioner to make a call of Rs. per share on all the contributories of the said company (*a*) and to fix the date for the payment of such call.

(2) That the costs of and incidental to this petition and the order to be made thereunder and the costs of and incidental to making and enforcing such call be paid out of the call money to be collected (or out of the assets coming to the hands of your petitioner).

(3) Or that such other order may be made in the premises as may be fit and proper.

Verification.

I, , the Official Liquidator of the abovenamed company, make oath (or solemnly affirm) that the statements contained in the foregoing petition are true to the best of my knowledge, information and belief.

Sworn (or solemnly affirmed), etc.

FORM No. 47 (Rule 150).

Advertisement of intended call.

(Title.)

Notice is hereby given that the day of 19 , at o'clock in the noon at the Court-house, Calcutta (or at the District Court) has been appointed for the hearing of an application to sanction a call on (all) the contributories of the said company (or as the case may be) and that the said call shall be for Rs. per share. All persons interested are entitled to attend at such day, hour and place and to object to such call being sanctioned.

Official Liquidator.

Dated the day of 19 .

FORM No. 48 (Rule 151).

Order giving leave to make a call.

(Title.)

Upon the application of the Official Liquidator of the abovenamed company, and upon reading the petition of the said Official Liquidator, filed the day of 19 , and an affidavit of (*a*) filed the day of 19 , and upon hearing

(*a*) Affidavit as to advertisements.

It is ordered that leave be given to the Official Liquidator to make a call of Rs. per share on (all) the contributories of the said company (*b*).

(*b*) Or as the case may be.

And it is ordered that each such contributory do on or before the day of 19 , pay to the Official Liquidator of the said company (into the bank at its head office or branch to the account of the Official Liquidator or, in the case of a District Court, into the District Court at) the amount which is due from each such contributory in respect of such call.

FORM No. 49 (Rule 151.)

Notice to be served with the order sanctioning a call.

(Title.)

(Address.)

(Date.)

The amount due from you (name) in respect of the call made pursuant to the order whereof a copy is attached hereto is the sum of Rs. (*a*) which sum is to be paid by you on or before the day of 19 to me as the Official Liquidator of the said company at my office No. (*a*) (or into the bank at its head office or branch or into the District Court at) to the account mentioned in the said order. You may pay the same in person, or through a banker or other agent, but this notice and copy of the order attached must be produced at the bank (or to the Court) upon such payment and the Secretary and Treasurer (or the Agent) of the bank (or the Nazir or other proper officer of the said Court) will, upon receiving the same, deliver to you a certificate of the payment signed by the said Secretary and Treasurer (or Agent) (or Judge). In order to prevent proceedings being

(*a*) For use according as the call is to be paid to the Official Liquidator or into the bank.

taken against you for nonpayment, you must immediately upon such payment, cause written notice of the payment, and of the date thereof to be given to me, as the Official Liquidator of the said company, at my office No.

Official Liquidator.

To

(Name of contributory.)

(Address.)

FORM No. 50 (Rule 151).

Summons to enforce call.

(Title.)

Let all parties concerned attend at on the day of 19 , at o'clock in the noon on the hearing of an application on the part of the Official Liquidator of the abovenamed company, that a call to the amount of Rs. per share may be enforced on the contributories of the said company set out in the schedule annexed hereto.

This summons was taken out by of attorney for the said Official Liquidator.

To , a contributory of the said company against whom the call is to be enforced.

THE SCHEDULE ABOVE REFERRED TO.

Number of list. 1	Name. 2	Address. 3	Description. 4	In what character included. 5	Amount. due. 6

FORM No. 51 (Rule 152).

Affidavit in support of application for order for payment of call.

(Title.)

I, , of , the Official Liquidator of the abovenamed company, make oath (or solemnly affirm) and say as follows :—

1. None of the contributories of the said company whose names are set forth in the schedule to the summons herein annexed have paid the sums set opposite their names respectively in the said schedule, which sums are the amount now due from them respectively in respect of the call of Rs. per share, in pursuance of the order of this Court in that behalf dated the day of 19 .

2. The sums set opposite the names of such contributories respectively in the said schedule are the amounts due and owing by such contributories respectively in respect of the said call.

Sworn (or solemnly affirmed), etc.

THE SCHEDULE ABOVE REFERRED TO.

Number of list.	Name.	Address.	Description.	In what character included.	Amount due.
1	2	3	4	5	6

Note.—In addition to the above affidavit, an affidavit of the service of the applications for the call will be required.

FORM No. 52 (Rule 152).

Order for payment of call due from a contributory.

(Title.)

Upon the application of , the Official Liquidator of the above-named company, and upon reading an affidavit of filed the day of 19 (*a*) and an affidavit of the Official Liquidator, filed the day of 19 (*b*) and upon hearing, it is ordered that of (or of the legal personal representative of late of deceased) one of the contributories of the said company (or, if against several contributories, the several persons named in the second column of the schedule to this order being contributories of the said company), do, on or before the day of 19 , or within four days after service of this order, pay to the Official Liquidator of the said company at his Office No. the sum of Rs. (or into the bank at its head office or branch to the account of the Official Liquidator (or into the District Court at) (if against a legal personal representatives add, out of the assets of the said deceased, in his hands as such legal personal representative as aforesaid, if the said has in his hands so much to be administered, or, if against several contributories, the several sums of money set opposite to their names respectively in the sixth column of the said schedule hereto), such sum(s) being the amounts(s) due from the said (or) (or the said several persons respectively) in respect of the call of Rs. per share duly made, dated the day of 19 .

(*a*) An affidavit of non-payment.

(*b*) Affidavit of service of the application for payment of the call.

THE SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

Number of list.	Name.	Address.	Description.	In what character included.	Amount due.
1	2	3	4	5	6

Note.—The copy for service of the above order must bear the following notice:—

"If you, the undermentioned , neglect to obey this order by the time mentioned therein, you will be liable to process of execution, for the purpose of compelling you to obey the same."

FORM No. 53 (Rule 152).

Affidavit of service of order for payment of call.

(Title.)

I, , of , make oath (or colemnly affirm) and say as follows :—

(1) I did, on the day of 19 personally serve of with the order made on the day of 19 which is hereto annexed and marked A by delivering to and leaving with the said at in the a true copy of the said order.

(2) There were on the said copy when so served the following words :—

"If you, the undermentioned , neglect to obey this order by the time mentioned therein, you will be liable to process of execution for the purpose of compelling you to obey the same," Sworn (or solemnly affirmed), etc.

FORM No. 54 (Rule 169).

Notice of Meeting (General Form).

(Title.)

(Address).
(Date).

Take notice that a meeting of creditors (or contributories) in the above matter will be held at on the day of 19 at o'clock in the noon.

Agenda

(*a*) (Here insert the purpose of the meeting.) (*a*)

Official Liquidator.

FORM No. 55 (Rule 170).

Affidavit of postage of notices of meeting.

(Title.)

(*a*) Description. I, , a (*a*) make oath (or solemnly affirm) and say as follows :—

(1) I did on the day of 19 post to each creditor mentioned in the company's list of debts (or to each contributory mentioned in the register of members of the company) a notice of the time and place of the meeting in the form hereto annexed and marked "A".

(2). The notices for creditors were addressed to the said creditors respectively according to their names and addresses appearing in the list of debts of the company.

(3). The notices for contributories were addressed to the contributories respectively according to their names and addresses appearing in the register of members of the company.

(4) I despatched the said notices by posting the same prepaid at the post office at before the hour of o'clock in the noon on the said day.

Sworn (or, solemnly affirmed) etc.

FORM No. 56 (Rule 173).

Nomination of chairman of a meeting.

(Title.)

I, , the Official Liquidator of do hereby nominate Mr. of to be Chairman of the meeting of creditors (or contributories) in the above matter, appointed to be held at on the day of 19 , and I depute him to use at such meeting on my behalf, all proxies held by me for use thereat.

Official Liquidator.

Dated this day of 19 .

FORM No. 57 (Rule 184).

Report of result of meeting of creditors or contributories.

(Title.)

I, , the Official Liquidator of the abovenamed company or Chairman of a meeting of the creditors (or contributoties) of the abovenamed company summoned in accordance with directions given on the day of 19 , by advertisement (or notice) dated the day of 19 , and held on the day of 19 , at , do hereby report the result of such meeting as follows :—

The said meeting was attended, either personally or by proxy, by creditors whose proofs of debts against the said company were admitted for voting purposes, amounting in the whole to the value of Rs. (or by contributories, holding in the whole shares in the said company, and entitled respectively by the regulations of the company to the number of votes hereinafter mentioned).

The proposal (or resolution) submitted to the said meeting was (here state proposal or resolution as submitted to the meeting).

The said meeting was unanimously of opinion that the said proposal (or resolution) should (not) be adopted ; [or the result of the voting upon such proposal (or resolution) was as follows] (*a*) :—

(*a*) Here set out the majorities by which the respective resolutions were carried or lost.

	Voting on Resolutions.			
Resolutions put to the meeting ...	For.		Against.	
	Number.	Amount.	Number.	Amount.
(State the substance of any resolutions put and total amount of their proofs if creditors or shares if contributories)				

	No.	Shares.	Votes.	No.	Shares.	Votes.
Creditors ...						
Contributories						

Dated this day of 19 .

Chairman.

FORM No. 58 (Rule 186).

Form of proxy.

(Title.)

(*a*) If a firm write "we" instead of "I" and set out the full name of the firm.

I, (*a*) of , a creditor (or a contributory)

(*b*) Here insert either Mr. " " of or "the Official Liquidator in the above matter."

of the abovenamed company hereby appoint (*b*) as my (our) proxy to vote for me (us) at the meeting of creditors (or contributories) of the said company to be held on the day of 19 and at any adjournment thereof.

Signed (c).

(c) If a firm, sign the firm's trading title and add "by partner in the said firm".

Dated this day of 19 .

Signature of witness.

Address.

Description.

N. B.—No creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been admitted or allowed and no contributory shall appoint a proxy who is not a contributory, but a creditor or contributory may appoint the Official Liquidator to act as his proxy.

FORM No. 59 (Rule 164).

Advertisement as to declaration of a dividend.

(Title.)

(Address).

(Date).

Notice is hereby given that a first (or, as the case may be) dividend of in the rupee has been declared and that the same will be payable on the day of 19 at the office of the Official Liquidator No.

Every person entitled to participate in this dividend will receive a notice to that effect and no payment will be made except upon production of such notice.

Official Liquidator.

FORM No. 60 (Rule 164).

Notice of dividend.

(Title.)

Dividend of in the rupee.

(Address.)

(Date).

Notice is hereby given that a first (or as the case may be) dividend of in the rupee has been declared, and that the same will be payable at my office, as above, on the day of 19 on or any subsequent day between the hours of and .

Upon applying for payment this notice must be produced together with any bills of exchange, promissory notes or other negotiable securities held by you. If you desire the dividend to be paid to some other person you may sign and lodge with the Liquidator an authority in the prescribed Form No. 61. If you do not attend personally, you must fill up and sign the subjoined Forms of Receipt and Authority.

Official Liquidator.

To

Note.—The receipt and authority should, in the case of a firm, be signed in the firm's name.

Receipt.

(Title.)

(Address).

(Date).

Received from the Official Liquidator the sum of rupees being the amount payable to me (us) in respect of the dividend of in the rupee.

Payee's signature.

Rs.

Authority for delivery.

(Title.)

(Address).

(Date).

Sir,

Please deliver to bearer [or me (us) by post, at my (our) risk] the dividend of Rs. payable to me (us).

Payee's signature.

To the Official Liquidator.

FORM No. 61 (Rule 166).

Authority to Liquidator to pay dividends to another person.

(Title)

(Address).

(Date).

To the Official Liquidator.

Sir,

I (we) hereby authorise you to pay the dividend referred to in the enclosed notice (*a*) to of. (a specimen of whose signature is given below) whose receipt shall be sufficient discharge.

(*a*) Form No. 60 must be enclosed with this authority.

(*b*) If signed by a firm, sign the firm's name and add "by H. B., a partner in the said firm".

Signature (b)

Witness.

Address.

Occupation.

Specimen of signature of person appointed as above.

Witness.

Address.

Occupation.

FORM No. 62 (Rule 167).

Schedule or list of contributories to whom a return is to be paid.

(Title.)

Number in settled list.	Name of contributory as in settled list.	Address.	Number of shares held as per settled list.	Total called up value.	Total paid up value.	Arrears of calls at date of return.	Previous returns of capital appropriated by liquidator for arrears of calls.	Amount of return payable at per share.	Net return payable.	Date and particulars of transfer of interest or other variation in list.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12

FORM No. 63 (Rule 167).

Notice of return to contributories.

(Title.)

Return of Rs. per share.

(Address).

(Date.)

Notice is hereby given that a first (or as the case may be) return of Rs. per share has been declared, and that the same will be payable at my office, as above, on the day of 19 , or on any subsequent day between the hours of m. and m.

Upon applying for payment this notice must be produced together with the share certificate(s). If you do not attend personally you must forward the share certificate and fill up and sign the subjoined Forms of Receipt and Authority.

(signed.)

Official Liquidator.

Note.—The receipt should be signed by the contributory personally, or in the case of joint contributories by each.

Receipt.

(Title.)

(Address.)

(Date.)

No.

Received from the Official Liquidator the sum of Rupees being the amount payable to me (us) in respect of the return of per share held by me (us).

Rs.

Signature (s).

Authority for Delivery.

(Address.)
(Date.)

Sir,

Please deliver to bearer [or me (us) by post, at my (our) risk], the return of Rs. payable to me (us).

Signature(s).

To the Official Liquidator.

FORM No. 64 (Rule 235).

Certificate of passing final account.

(Title.)

I hereby certify that the Official Liquidator of the abovenamed company, has passed his final account as such Official Liquidator, and that a balance of Rs. is shown by such account to be in his hands.

Dated this *day of* 19 . *Judge.*

FORM No. 65 (Rule 238).

Order for dissolution of the company.

(Title.)

Upon the application of the Official Liquidator of the abovenamed company, and upon reading the certificate dated the day of (*a*) and it appearing that the balance of Rs. found in the hands of the Official Liquidator has been paid to , it is ordered that the said , Limited, be dissolved as from this day of 19 , and that the recognizances, dated the day of 19 , entered into by the said Official Liquidator, together with and his sureties be vacated.

(*a*) Certificate of passing final account.

FORM No. 66 (Rule 240).

Form of Order transferring winding up proceedings from the High Court to a District Court or from one District Court to another.

(Title).

It is hereby ordered that the winding up proceedings in the above matter, together with all documents and papers thereto relating, and all moneys and securities standing therein to the credit of the Official Liquidator, be transferred to the District Court at (or from the District Court at to the District Court at) and the said District Court at shall hereafter have cognizance of all such proceedings and take into its custody all such moneys and securities.

Judge.

Dated this *day of* 19 .

FORM No. 67-A (Rule 249).

THE INDIAN COMPANIES ACT, 1913.

Members' Voluntary Winding up.

Notice of appointment of Liquidators.

(Pursuant to section 214.)

Name of company

Presented by

Members' voluntary winding up.

To the Registrar of Joint Stock Companies,

I (or we) of hereby give you notice that I (or we) have been appointed Liquidator(s) of Limited, by (*a*) Resolution of the company, dated the day of

(*a*) State how appointed, whether by Resolution of the company, or how otherwise, and adapt, if necessary.

(*b*) To be signed by each Liquidator, if more than one.

(Signature) (b)

Dated the day of 19 .

FORM No. 67-B (Rule 249).

THE INDIAN COMPANIES ACT, 1913.

Creditors' Voluntary Winding up.

Notice of appointment of Liquidators.

(Pursuant to section 214.)

Name of company

Presented by

Creditors' voluntary winding up.

To the Registrar of Joint Stock Companies,

I (or we) of hereby give notice that I (or we) have been appointed Liquidator(s) of , Limited, by (*a*)

(*a*) State how appointed, whether by the creditors of the company or how otherwise.

(*b*) To be signed by each Liquidator, if more than one.

Signature (b)

Dated the day of 19 .

FORM No. 68 (Rule 195).

Summons under section 195 of the Indian Companies Act, 1913.

(Name of Court).

In the matter of
Ltd. (in liquidation),
And
In the matter of section 195 of the Indian Companies Act, 1913.

GEORGE, VI, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To

You are hereby required to attend this Court on the day of at twelve o'clock noon to give evidence before in the above matter and thereafter on such other dates as you may be required, and to bring with you and produce at the time and place aforesaid hereof if you fail having no lawful impediment to be then made known to be said and allowed by him the Court may by Warrant cause you to be apprehended and brought up for examination.

Witness at aforesaid, the day of in the year of our Lord one thousand nine hundred and thirty .

Attorney.

(*District Judge*) *Master.*

The serving officer will tender a reasonable sum to the witness abovenamed for conduct money and expenses.

Note.—This summons is issued on the application of

FORM No. 69 (Rule 248-B).

THE INDIAN COMPANIES ACT, 1913.

Members' Voluntary Winding up.

Declaration of Solvency.

(Pursuant to section 207.)

Name of company...

Presented by....................................

Declaration of Solvency.

We,
of
of
of
of
of

being all the/the majority of the Directors of Company, Limited, do swear (or solemnly affirm) and declare that we have made a full enquiry into the affairs of this Company, and that, having so done, we have formed the opinion that this Company will be able to pay its debts in full within a period, not exceeding three years from the commencement of the winding up.

Signatures of Directors.

Sworn/Solemnly affirmed
by the abovenamed........
....
at...............................
this day of
19 , before me.
Commissioner for Oaths.

FORM No. 70A. (Rule 248A).

THE INDIAN COMPANIES ACT, 1913.

Members' Voluntary Winding Up.

Return of final Winding-up Meeting.

(Pursuant to section 208-E.)

Name of Company...............

Presented by ....

Members' Voluntary Winding Up.

To the Registrar of Joint Stock Companies,......................................

I (or we) of being the Liquidator(s) of Limited, have to inform you that a General Meeting of the Company was duly (a) held on/summoned for the day of , 19 pursuant to Section 208-E of the Indian Companies Act, 1913, for the purpose of having an account (of which a copy is attached hereto) (b) laid before it showing how the Winding up of the Company has been conducted, and the property of the Company has been disposed of, and that (c) the same was done accordingly/no quorum was present at the Meeting.

(a) Strike out that which does not apply.

(b) The Copy Account accompanying this Return must be authenticated by the signature(s) of the Liquidator(s).

(c) Strike out that which does not apply.

(d) To be signed by each Liquidator if more than one.

(Signature) *(d)*

Dated the *day of* 19 .

FORM No. 70B (Rule 248A).

THE INDIAN COMPANIES ACT, 1913.

Creditors' Voluntary Winding up.

Return of the Final Winding-up Meetings of Members and Creditors.

(Pursuant to Section 209-H.)

Name of Company..

Presented by.....................................

Creditors' Voluntary Winding up.

To the Registrar of Joint Stock Companies,...

I (or we) of being the Liquidator(s) of , Limited have to inform you

(a) Strike out that which does not apply.

(b) The Copy Account accompanying this Return must be authenticated by the signature(s) of the Liquidator(s).

(c) To be signed by each Liquidator if more than one.

(1) that a General Meeting of this Company was duly (a) held on/summoned for the day of 19 , pursuant to section 209-H of the Indian Companies Act, 1913, for the purpose of having an Account (of which a copy is attached hereto) (b) laid before it showing how the Winding up of the Company has been conducted and the Property of the Company has been disposed of, and that (a) the same was done accordingly/no quorum was present at the Meeting.

(2) that a Meeting of the Creditors of this Company was duly (a) held on/summoned for the day of 19 , pursuant to Section 209-H of the Indian Companies Act, 1913, for the purpose of having the said Account laid before it showing how the Winding up of the Company has been conducted and the Property of the Company has been disposed of, and that (a) the same was done accordingly/no quorum was present at the Meeting.

(Signature) (c).

Dated the day of 19 .

APPENDIX G.

ENGLISH COMPANIES ACT, 1929.

19 & 20 Geo. 5, c. 23.

ARRANGEMENT OF SECTIONS.

PART I.—Incorporation of Companies and matters incidental thereto.

Memorandum of Association.

Section.

1. Mode of forming incorporated company.
2. Requirements with respect to memorandum.
3. Stamp and signature of memorandum.
4. Restriction on alteration of memorandum.
5. Mode in which and extent to which objects of company may be altered.

Articles of Association.

6. Articles prescribing regulations for companies.
7. Regulations required in case of unlimited company or company limited by guarantee.
8. Adoption and application of Table A.
9. Printing, stamp and signature of articles.
10. Alteration of articles by special resolution.

Form of Memorandum and Articles.

11. Statutory forms of memorandum and articles.

Registration.

12. Registration of memorandum and articles.
13. Effect of registration.
14. Power of company to hold lands.
15. Conclusiveness of certificate of incorporation.
16. Registration of unlimited company as limited.

Provisions with respect to Names of Companies.

17. Restriction on registration of companies by certain names.
18. Power to dispense with "Limited" in name of charitable and other companies.
19. Change of name.

Section.

General Provisions with respect to Memorandum and Articles.

20. Effect of memorandum and articles.
21. Provision as to memorandum and articles of companies limited by guarantee.
22. Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.
23. Copies of memorandum and articles to be given to members.
24. Issued copies of memorandum to embody alterations.

Membership of Company.

25. Definition of member.

Private Companies.

26. Meaning of "private company."
27. Circumstances in which company ceases to be, or to enjoy privileges of, a private company.

Reduction of Number of Members below Legal Minimum.

28. Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members.

Contracts, &c.

29. Form of contracts.
30. Bills of exchange and promissory notes.
31. Execution of deeds abroad.
32. Power for company to have official seal for use abroad.

Authentication of Documents.

33. Authentication of Documents.

PART II.—Share Capital and Debentures.

Prospectus.

34. Dating and registration of prospectus.
35. Specific requirements as to particulars in prospectus.
36. Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospecuts.
37. Liability for statements in prospectus.
38. Document containing offer of shares or debentures for sale to be deemed prospectus.

Allotment.

39. Prohibition of allotment unless minimum subscription received.
40. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.
41. Effect of irregular allotment.
42. Return as to allotments.

Commissions and Discounts.

43. Power to pay certain commission, and prohibition of payment of all other commissions, discounts, &c.
44. Statement in balance sheet as to commissions and discounts.
45. Prohibition of provision of financial assistance by company for purchase of its own shares.

Issue of Redeemable Preference Shares and Shares at Discount.

46. Power to issue redeemable preference shares.
47. Power to issue shares at a discount.

Miscellaneous Provisions as to Share Capital.

48. Power of company to arrange for different amounts being paid on shares.
49. Reserve liability of limited company.
50. Power of company limited by shares to alter its share capital.
51. Notice to registrar of consolidation of share capital, conversion of shares into stock, &c.
52. Notice of increase of share capital.

Section.

53. Power of unlimited company to provide for reserve share capital on re-registration.
54. Power of company to pay interest out of capital in certain cases.

Reduction of Share Capital.

55. Special resolution for reduction of share capital.
56. Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors.
57. Orders confirming reduction and powers of court on making such order.
58. Registration of order and minute of reduction.
59. Liability of members in respect of reduced shares.
60. Penalty on concealment of name of creditor.

Variation of Shareholders' Rights.

61. Rights of holders of special classes of shares.

Transfer of Shares and Debentures, Evidence of Title, &c.

62. Nature of shares.
63. Transfer not to be registered except on production of instrument of transfer.
64. Transfer by personal representative.
65. Registration of transfer at request of transferor.
66. Notice of refusal to register transfer.
67. Duties of company with respect to issue of certificates.
68. Certificate to be evidence of title.
69. Evidence of grant of probate.
70. Issue and effect of share warrants to bearer.
71. Penalty for personation of shareholder.
72. Offences in connection with share warrants in Scotland.

Special Provisions as to Debentures.

73. Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deed.
74. Perpetual debentures.
75. Power to re-issue redeemed debentures in certain cases.
76. Specific performance of contracts to subscribe for debentures.
77. Validity of debentures to bearer in Scotland.
78. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

PART III.—Registration of Charges.

Registration of Charges with Registrar of Companies.

79. Registration of charges created by companies registered in England.
80. Duty of company to register charges created by company.
81. Duty of company to register charges existing on property acquired.
82. Register of charges to be kept by Registrar of Companies.
83. Endorsement of certificate of registration on debentures.
84. Entry of satisfaction.
85. Rectification of register of charges.
86. Registration of enforcement of security.

Provisions as to Company's Register of Charges and as to Copies of Instruments creating Charges.

87. Copies of instruments creating charges to be kept by company.
88. Company's register of charges.
89. Right to inspect copies of instruments creating mortgages and charges and company's register of charges.

Application of Part III. to Companies Incorporated outside England.

90. Application of Part III. to charges created, and property subject to charge acquired by company incorporated outside England.

Section.

Transitional Provision as to Matters required to be registered under this Act, but not under former Acts.

91. Provision as to charges created, and charges on property acquired, by company before commencement of Act.

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COMPANIES ACT, 1929.

19 & 20 Geo. 5, c. 23.

An Act to consolidate the Companies Acts, 1908 to 1928, and certain other enactments connected with the said Acts.

[10th May, 1929.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

Incorporation of Companies and Matters Incidental Thereto.

Memorandum of Association.

Mode of forming incorporated company. 1.—(1) Any seven or more persons, or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either—

(a) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed "a company limited by shares") ; or

(b) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee") ; or

(c) A company not having any limit on the liability of its members (in this Act termed "an unlimited company").

Requirements with respect to memorandum.

2.—(1) The memorandum of every company must state—

(a) The name of the company, with "Limited" as the last word of the name in the case of a company limited by shares or by guarantee :

(b) Whether the registered office of the company is to be situate in England or in Scotland :

(c) The objects of the company.

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselvs, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital—

(a) The memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount ;

(b) No subscriber of the memorandum may take less than one share ;

(c) Each subscriber must write opposite to his name the number of shares he takes.

Stamp and signature of memorandum.

3. The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England.

Restriction on alteration of memorandum.

4. A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act.

Mode in which and extent to which objects of company may be altered.

5.—(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

(a) to carry on its business more economically or more efficiently ; or

(b) to attain its main purpose by new or improved means ; or

(c) to enlarge or change the local area of its opeartions ; or

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or

(e) to restrict or abandon any of the objects specified in the memorandum ; or

(f) to sell or dispose of the whole or any part of the undertaking of the company ; or

(g) to amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied—

(a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration ; and

(b) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court :

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement :

Provided that no part of the capital of the company shall be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the copy so delivered, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.

(7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

Articles of Association.

Articles prescribing regulations for companies.

6. There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

Regulations required in case of unlimited company or company limited by guarantee.

7.—(1) In the case of an unlimited company the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

(2) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has not a share capital, must state the number of members with which the company proposes to be registered.

(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

8.—(1) Articles of association may adopt all or any of the regulations contained in Table A.

Adoption and application of Table A.

(2) In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Printing, stamp, and signature of articles.

9. Articles must—

(1) be printed;

(2) be divided into paragraphs numbered consecutively;

(3) bear the same stamp as if they were contained in a deed;

(4) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England.

Alteration of articles by special resolution.

10.—(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

Form of Memorandum and Articles.

Statutory forms of memorandum and articles.

11. The form of—

(1) the memorandum of association of a company limited by shares;

(2) the memorandum and articles of association of a company limited by guarantee and not having a share capital;

(3) the memorandum and articles of association of a company limited by guarantee and having a share capital;

(4) the memorandum and articles of association of an unlimited company having a share capital;

shall be respectively in accordance with the forms set out in Tables B., C., D. and E., in the First Schedule to this Act, or as near thereto as circumstances admit.

Registration.

Registration of memorandum and articles.

12. The memorandum and the articles, if any, shall be delivered to the registrar of companies for England or the registrar of companies for Scotland according as the registered office of the company is stated by the memorandum to be situate in England or Scotland, and the registrar shall retain and register them.

Effect of registration.

13.—(1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Power of company to hold lands.

14.—(1) A company incorporated under this Act shall have power to hold lands, and as regards lands in any part of the United Kingdom without licence in mortmain:

Provided that a company formed for the purpose of promoting art, science, religion, charity or any other like object not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land, but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit.

(2) A licence given by the Board of Trade under this section shall be in accordance with the form set out in the Second Schedule to this Act, or as near thereto as circumstances admit.

15.—(1) A certificate of incorporation given by the registrar in respect of any

Conclusiveness of certificate of incorporation. association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A statutory declaration by a solicitor of the Supreme Court, and in Scotland by an enrolled law agent, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Registration of unlimited company as limited. 16.—(1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, or a company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of the company before the registration, and those rights or liabilities may be enforced in manner provided by Part IX. of this Act in the case of a company registered in pursuance of that part.

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts from those under which the company is registered as a limited company.

Provisions with respect to Names of Companies.

Restriction on registration of companies by certain names. 17.—(1) No company shall be registered by a name which—

(a) is idential with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires; or

(b) contains the words "Chamber of Commers", unless the company is a company which is to be registered under a licence granted in pursuance of the next following section of this Act without the addition of the word "Limited" to its name ; or

(c) contains the words "Building Society."

(2) Except with the consent of the Board of Trade no company shall be registered by name which—

(a) contains the words "Royal" or "Imperial" or in the opinion of the registrar suggests, or is calculated to suggest, the patronage of His Majesty or of any member of the Royal Family or connection with His Majesty's Government or any department thereof ; or

(b) contains the words "Municipal" or "Chartered" or in the opinion of the registrar suggests, or is calculated to suggest, connection with any municipality or other local authority or with any society or body incorporated by Royal Charter ; or

(c) contains the word "Co-operative."

Power to dispense with "Limited" in name of charitable and other companies. 18.—(1) Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits, if any, or other income in promoting its object, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association may be registered as a company with limited liability, without the addition of word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by the Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the association, and shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members to the registrar of companies.

(4) A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that before a licence is so revoked the Board shall give to the association notice in writing of their intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

(5) Where the name of the association contains the words "Chamber of Commerce," the notice to be given as aforesaid shall include a statement of the effect of the provisions of sub-section (3) of the next following section of this Act.

Change of name.

19.—(1) A company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name.

(2) If a company, through inadvertence or otherwise, is, without such consent as is mentioned in paragraph (a) of sub-section (1) of section seventeen of this Act, registered by a name which is identical with that by which a company in existence is previously registered, or which so nearly resembles that name as to be calculated to deceive, the first-mentioned company may change its name with the sanction of the registrar.

(3) Where a licence granted in pursuance of the last foregoing section of this Act to a company the name of which contains the words "Chamber of Commerce" is revoked, the company shall, within a period of six weeks from the date of the revocation or such longer period as the Board of Trade may think fit to allow, change its name to a name which does not contain those words.

If a Company makes default in complying with the requirements of this subsection, it shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

(4) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(5) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

General Provisions with respect to Memorandum and Articles.

Effect of memorandum and articles.

20.—(1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) All money payable by any member to the company under the memorandnm or articles shall be a debt due from him to the company, and in England be of the nature of a specialty debt.

Provision as to memorandum and articles of companies limited by guarantee.

21.—(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of January, nineteen hundred and one, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.

22. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company :

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Copies of memorandum and articles to be given to members.

23.—(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any Act of Parliament which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of one shilling or such less sum as the company may prescribe, and, in the case of a copy of an Act, of such sum not exceeding the published price thereof as the company may require.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding one pound.

Issued copies of memorandum to embody alterations.

24.—(1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding one pound for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

Membership of Company.

Definition of member.

25.—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Private Companies.

Meaning of "private company."

26.—(1) For the purposes of this Act the expression "private company" means a company which by its articles—

(a) restricts the right to transfer its shares ; and

(b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company were while in that employment, and have continued after the determination of that employment to be, members of the company ; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

27.—(1) If a company, being a private company, alters its articles in such manner

Circumstances in which company ceases to be, or to enjoy privileges of, a private company.

that they no longer include the provisions which, under the last foregoing section of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar of companies for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the Third Schedule to this Act.

(2) If default is made in complying with sub-section (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in section twenty-eight, sub-section (3) of section one hundred and ten, sub-section (1) of section one hundred and thirty and paragraph (4) of section one hundred and sixty-eight of this Act, and thereupon the said provisions shall apply to the company as if it were not a private company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

Reduction of Number of Members below Legal Minimum.

Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members.

28. If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Contracts, &c.

Form of contracts.

29.—(1) Contracts on behalf of a company may be made as follows :—

(a) A contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company:

(b) A contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied:

(c) A contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

(4) A deed to which a company is a party shall be held to be validly executed in Scotland on behalf of the company if it is executed in accordance with the provisions of this Act or is sealed with the common seal of the company and subscribed on behalf of

the company by two of the directors and the secretary of the company, and such subscription on behalf of the company shall be binding whether attested by witnesses or not.

Bills of exchange and promissory notes.

30. A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

Execution of deeds abroad.

31.—(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

Power for company to have official seal for use abroad.

32.—(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place not situate in the United Kingdom, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place, to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument, to which the seal is affixed, the date on which and the place at which it is affixed.

Authentication of Documents.

Authentication of documents.

33.—A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

PART II.

Share Capital and Debentures.

Prospectus.

Dating and registration of prospectus.

34.—(1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be delivered to the registrar of companies for registration on for before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered the company, and every person who is knowingly a party to the issue of the prospectus, shall

be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

Specific requirements as to particulars in prospectus.

35.—(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I. of the Fourth Schedule to this Act and set out the reports specified in Part II. of that Schedule and the said Parts I. and II. shall have effect subject to the provisions contained in Parts III. of the said Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section :

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

(a) in connection with a bonâ fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection he shall be liable to a fine not exceeding five hundred pounds.

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(a) as regards any matter not disclosed, he proves that he was not cognisant thereof ; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part ; or

(c) the non-compliance or contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused :

Provided that in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of Part I. of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

36.—(1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(2) This section shall not apply to a private company.

Liability for statements in prospectus.

37.—(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

(a) every person who is a director of the company at the time of the issue of the prospectus ; and

(b) every person who has authorised himself to be named and is named in the prospectus as a directot or as having agreed to become a director either immediately or after an interval of time ; and

(c) every person being a promoter of the company ; and

(d) every person who has authorised the issue of the prospectus,

shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent ; or

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent ; or

(iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor ; or

(iv) that—

(a) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true ; and

(b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report of valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation ; and

(c) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document :

Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report or valuation as is mentioned in paragraph (iv) (b) of this subsection was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section—

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company:

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

Document containing offer of shares or debentures for sale to be deemed prospectus.

38.—(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section thirty-four of this Act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section thirty-five of this Act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent, authorised in writing.

Allotment.

Prohibition of allotment unless minimum subscription received.

39.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 in Part I. of the Fourth Schedule to this Act has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

For the purposes of this subsection a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as "the minimum subscription."

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.

40.—(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the registrar of companies for registration a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing in the form and containing the particulars set out in the Fifth Schedule to this Act.

(2) This section shall not apply to a private company.

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorises or permits the contravention shall be liable to a fine not exceeding one hundred pounds.

Effect of irregular allotment.

41.—(1) An allotment made by a company to an applicant in contravention of the provisions of the two last foregoing sections of this Act, shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

Return as to allotments.

42.—(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the registrar of companies for registration—

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the registrar of companies

for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

(3) If default is made in complying with this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues:

Provided that, in case of default in delivering to the registrar of companies within one month after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omisssion to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivering of the document for such period as the court may think proper.

Commissions and Discounts.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, &c.

43.—(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company it—

(a) the payment of the commission is authorised by the articles; and

(b) the commission paid or agreed to be paid does not exceed ten per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and

(c) the amount or rate per cent. of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar of companies for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and

(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or aggreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the registrar of the statement in the prescribed form. the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty-five pounds.

Statement in balance sheet as to commissions and discounts.

44.—(1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Prohibition of provision of financial assistance by company for purchase of its own shares.

45.—(1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company:

Provided that nothing in the section shall be taken to prohibit—

(a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(c) the making by a company of loans to persons, other than directors, bonâ fide in the employment of the company with a view to enabling those persons to purchase full-paid shares in the company to be held by themselves by way of beneficial ownership.

(2) The aggregate amount of any outstanding loans made under the authority of provisos (b) and (c) to sub-section (1) of this section shall be shown as a separate item in every balance sheet of the company.

(3) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

Issue of Redeemable Preference Shares and Shares at Discount.

Power to issue redeemable preference shares.

46.—(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

Provided that—

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(b) no such shares shall be redeemed unless they are fully paid;

(c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund," a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company;

(d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provisions of this sub-section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this sub-section :

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of the last foregoing subsection, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Power to issue shares at a discount.

47.—(1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued :

Provided that—

(a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company and must be sanctioned by the court ;

(b) the resolution must specify the maximum rate of discount at which the shares are to be issued ;

(c) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business ;

(d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of the discount as has not been written off at the date of the issue of the document in question.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

Miscellaneous Provisions as to Share Capital.

Power of company to arrange for different amounts being paid on shares.

48. A company, if so authorised by its articles, may do any one or more of the following things—

(1) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares :

(2) Accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up :

(3) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Reserve liability of limited company.

49. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Power of company limited by shares to alter its share capital.

50.—(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum as follows, that is to say, it may—

(a) increase its share capital by new shares of such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

(d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

Notice to registrar of consolidation of share capital, conversion of shares into stock, &c.

51.—(1) If a company having a share capital has—

(a) consolidated and divided its share capital into shares of larger amount than its existing shares; or

(b) converted any shares into stock; or

(c) re-converted stock into shares; or

(d) subdivided its shares or any of them; or

(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section fifty-five of this Act,

it shall within one month after so doing give notice thereof to the registrar of companies specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Notice of increase of share capital.

52.—(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall within fifteen days after the passing of the resolution authorising the increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the registrar of companies together with the notice a printed copy of the resolution authorising the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Power of unlimited company to provide for reserve share capital on re-registration.

53.—An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :—

(1) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(2) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Power of company to pay interest out of capital in certain cases.

54.—(1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

(a) No such payment shall be made unless it is authorised by the articles or by special resolution:

(b) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade:

(c) Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry:

(d) The payment shall be made only for such period as may be determined by the Board of Trade, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided:

(e) The rate of interest shall in no case exceed four per cent. per annum or such other rate as may for the time being be prescribed by Order in Council:

(f) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid:

(g) The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate:

(h) Nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies.

(2) If default is made in complying with proviso (g) to subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

Reduction of Share Capital.

Special resolution for reduction of share capital.

55.—(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital."

56.—(1) Where a company has passed a resolution for reducing share capital it may apply by petition to the court for an order confirming the reduction.

Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to the next following subsection :—

(a) Every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction:

(b) The court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction :

(c) Where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount :—

(i) If the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim ;

(ii) If the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) of this section shall not apply as regards any class or any classes of creditors.

Order confirming reduction and powers of court on making such order.

57.—(1) The court, if satisfied, with respect to every creditor of the company who under the last foregoing section is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court makes any such order, it may—

(a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced" ; and

(b) make an order requiring the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced," those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Registration of order and minute of reduction.

58.—(1) The registrar of companies, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section twenty-four of this Act.

Liability of members in respect of reduced shares.

59.—(1) In the case of a reduction of share capital a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be:

Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor.

60. If any director, manager, secretary or other officer of the company—

(1) wilfully conceals the name of any creditor entitled to object to the reduction; or

(2) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(3) aids, abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be guilty of a misdemeanour.

Variation of Shareholders' Rights.

Rights of holders of special classes of shares.

61.—(1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under this section must be made within seven days after the date on which the consent was given or the resolution was passed, as the case may

be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the registrar of companies, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

Transfer of Shares and Debentures, Evidence of Title, &c.

Nature of shares.

62.—(1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

Transfer not to be registered except on production of instrument of transfer.

63. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Transfer by personal representative.

64. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

Registration of transfer at request of transferor.

65. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Notice of refusal to register transfer.

66.—(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Duties of company with respect to issue of certificates.

67.—(1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the date on which a transfer of any such shares, debentures, or debenture stock, is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

The expression "transfer" for the purpose of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) of this section fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

Certificate to be evidence of title.

68. A certificate, under the common seal of the company, specifying any shares held by any member shall be primâ facie evidence of the title of the member to the shares.

Evidence of grant of probate.

69. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

Issue and effect of share warrants to bearer.

70.—(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant as aforesaid is in this Act termed a "share warrant."

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

Penalty for personation of shareholder.

71. If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he shall be guilty of felony, and shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

Offences in connection with share warrants in Scotland.

72.—(1) If in Scotland any person—

(a) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or

(b) by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered;

he shall be guilty of felony and shall on conviction thereof be liable at the discretion of the court to be kept in penal servitude for life or for any term not less than three years.

(2) If in Scotland any person without lawful authority or excuse, proof whereof shall lie on him—

(a) engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be—

(i) a share warrant or coupon issued or made by any particular company in pursuance of this Act; or

(ii) a blank share warrant or coupon so issued or made; or

(iii) a part of such a share warrant or coupon; or

(b) uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively; or

(c) knowingly has in his custody or possession any such plate, wood, stone, or other material ;

he shall be guilty of felony, and shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years.

Special Provisions as to Debentures.

Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deed.

73.—(1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection.

For the purposes of this subsection a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year as may be therein specified.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of sixpence for every hundred words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every hundred words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and further shall be liable to a default fine of two pounds.

(5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

Perpetual debentures.

74. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Power to re-issue redeemed debentures in certain cases.

75.—(1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, then—

(a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company ; or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet of the company.

(4) Where a company has either before or after the passing of this Act deposited, any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the passing of this Act shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(6) Where any debentures which have been redeemed before the date of the commencement of this Act are re-issued subsequently to that date, the re-issue of the debentures shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before the date of the commencement of this Act, if section one hundred and four of the Companies (Consolidation) Act, 1908, as originally enacted, had been enacted in this Act instead of this section.

Specific performance of contracts to subscribe for debentures.

76. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Validity of debentures to bearer in Scotland.

77. It is hereby declared that, notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are valid and binding according to their terms.

Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

78.—(1) Where, in the case of a company registered in England, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part V. of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

PART III.

Registration of Charges.

Registration of Charges with Registrar of Companies.

Registration of charges created by companies registered in England.

79.—(1) Subject to the provisions of this Part of this Act, every charge created after the fixed date by a company registered in England and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instruments, if any, by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(2) This section applies to the following charges :—

(a) a charge for the purpose of securing any issue of debentures;

(b) a charge on uncalled share capital of the company;

(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

(d) a charge on land, wherever situate, or any interest therein;

(e) a charge on book debts of the company;

(f) a floating charge on the undertaking or property of the company;

(g) a charge on calls made but not paid;

(h) a charge on a ship or any share in a ship;

(i) a charge on goodwill, on a patent or a licence under a patent, on a trade-mark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a charge comprises property situate in Scotland or Northern Ireland and registration in the country where the property is situate is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in Scotland or Northern Ireland, as the case may be, on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(8) Where a series of debentures containing, or giving by the reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled pari passu is created by a company, it shall for the purposes of this section be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

(a) the total amount secured by the whole series; and

(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(9) Where any commission, allowance, or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this subsection be treated as the issue of the debentures at a discount.

(10) In this Part of this Act—

(a) the expression "charge" includes mortgage;

(b) the expression "the fixed date" means in relation to the charges specified in paragraphs (a) to (f), both inclusive, of subsection (2) of this section, the first day of July, nineteen hundred and eight, and in relation to the charges specified in paragraphs (g) to (i), both inclusive, of the said subsection, the commencement of this Act.

Duty of company to register charges created by company.

80.—(1) It shall be the duty of a company to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under the last foregoing section, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(3) If any company makes default in sending to the registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every director, manager, secretary or other person, who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

Duty of company to register charges existing on property acquired.

81.—(1) Where after the commencement of this Act a company registered in England acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part of this Act, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside Great Britain, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in the United Kingdom shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

Register of charges to be kept by registrar of companies.

82.—(1) The registrar of companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Act, and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars:—

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (8) of section seventy-nine of this Act;

(b) in the case of any other charge—

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and

(ii) the amount secured by the charge ; and
(iii) short particulars of the property charged ; and
(iv) the persons entitled to the charge.

(2) The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part of this Act, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part of this Act as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(4) The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges entered in the register.

Endorsement of certificate of registration on debentures.

83.—(1) The company shall cause a copy of every certificate of registration given under the last foregoing section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered :

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding one hundred pounds.

Entry of satisfaction.

84. The registrar of companies may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

Rectification of register of charges.

85. The court, on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified.

Registration of enforcement of security.

86.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment under the said powers give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Provision as to Company's Register of Charges and as to Copies of Instruments creating Charges.

Copies of instruments creating charges to be kept by company.

87. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Act to be kept at the registered office of the company :

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

Company's register of charges.

88.—(1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

Right to inspect copies of instruments creating mortgages and charges and company's register of charges.

89.—(1) The copies of instruments creating any charge requiring registration under this Part of this Act with the registrar of companies, and the register of charges kept in pursuance of the last foregoing section, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in England, the court may by order compel an immediate inspection of the copies or register.

Application of Part III. to Companies incorporated outside England.

Application of Part III. to charges created and property subject to charge acquired by company incorporated outside England.

90. The provisions of this Part of this Act shall extend to charges on property in England which are created, and to charges on property in England which is acquired, after the commencement of this Act by a company (whether a company within the meaning of this Act or not) incorporated outside England which has an established place of business in England.

Transitional Provision as to matters required to be registered under this Act, but not under former Acts.

Provision as to charges created, and charges on property acquired, by company before commencement of Act.

91.—(1) It shall be the duty of a company within six months after the commencement of this Act to send to the registrar of companies for registration the prescribed particulars of—

(a) any charge created by the company before the date of the commencement of this Act and remaining unsatisfied at that date, which would have been required to be registered under the provisions of paragraphs (g), (h) and (i) of subsection (2) of section seventy-nine of this Act or under the provisions of section ninety of this Act, if the charge had been created after the commencement of this Act; and

(b) any charge to which any property acquired by the company before the commencement of this Act is subject and which would have been required to be registered under the provisions of section eighty-one of this Act or under the provisions of section ninety of this Act, if the property had been acquired after the commencement of this Act.

(2) The registrar, on payment of the prescribed fee, shall enter the said particulars on the register kept by him in pursuance of this Part of this Act.

(3) If a company fails to comply with this section, the company and every director, manager, secretary or other officer of the company, or other person who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds for every day during which the default continues:

Provided that the failure of the company shall not prejudice any rights which any person in whose favour the charge was made may have thereunder.

(4) For the purposes of this section the expression "company" includes a company (whether a company within the meaning of this Act or not) incorporated outside England which has an established place of business in England.

PART IV.

Management and Administration.

Registered Office and Name.

Registered office of company.

92.—(1) A company shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the registrar of companies, who shall record the same.

The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Publication of name by company.

93.—(1) Every company—

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(b) shall have its name engraven in legible characters on its seal;

(c) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) If a company does not paint or affix its name in manner directed by this Act, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If a company fails to comply with paragraph (b) or paragraph (c) of sub-section (1) of this section, the company shall be liable to a fine not exceeding fifty pounds.

(4) If a director, manager, or officer of a company, or any person on its behalf—

(a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid; or

(b) issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, or order for money or goods, wherein its name is not mentioned in manner aforesaid; or

(c) issues or authorises the issue of any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid;

he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

Restrictions on Commencement of Business.

Restrictions on commencement of business.

94.—(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(c) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

(a) there has been delivered to the registrar of companies for registration a statement in lieu of prospectus; and

(b) every director of the company has paid to the company, on each of the shares taken or contrated to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(c) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors in the prescribed form that paragraph (b) of this subsection has been complied with.

(3) The registrar of companies shall, on the delivery to him of the said statutory declaration, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(7) Nothing in this section shall apply to—

(a) a private company; or

(b) a company registered before the first day of January, nineteen hundred and one; or

(c) a company registered before the first day of July, nineteen hundred and eight, which has not issued a prospectus inviting the public to subscribe for its shares.

Register of Members.

Register of members.

95.—(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:—

(a) The names and addresses, and the occupation, if any, of the numbers, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) The date at which each person was entered in the register as a member ;

(c) The date at which any person ceased to be a member :

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a) of this subsection.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Index of members of company.

96.—(1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Provisions as to entries in register in relation to share warrants.

97.—(1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely :—

(a) The fact of the issue of the warrant ;

(b) A statement of the shares included in the warrant, distinguishing each share by its number ; and

(c) The date of the issue of the warrant.

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) of this section shall be deemed to be the particulars required by this Act to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

(5) Subject to the provisions of this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

Inspection of register of members.

98.—(1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, shall be kept at the registered office of the company, and except when the register is closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds, and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

Power to close register.

99. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year,

Power of Court to rectify register.

100.—(1) If—

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member;

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) Where an application is made under this section, the Court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

Trusts not to be entered on register in England.

101. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England.

Register to be evidence.

102. The register of members shall be primâ facie evidence of any matters by this Act directed or authorised to be inserted therein.

Dominion Register.

Power for company to keep dominion register.

103.—(1) A company having a share capital whose objects comprise the transaction of business in any part of His Majesty's dominions outside Great Britiain, the Channel Islands, or the Isle of Man may cause to be kept in any such part of His Majesty's dominions in which it transacts business a branch register of members resident in that part (in this Act called a "dominion register").

(2) The company shall give the registrar of companies notice of the situation of the office where any dominion register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within fourteen days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) References to a colonial register occuring in any articles registered before the commencement of this Act shall be construed as references to a dominion register.

Regulations as to dominion register.

104.—(1) A dominion register shall be deemed to be part of the company's register of members (in this and the next following section called "the principal register").

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the dominion register is kept, and that any competent court in that part of His Majesty's dominions where the register is kept may exercise

the same jurisdiction of rectifying the register as is under this Act exerciseable by the court, and that the offences of refusing inspection or copies of a dominion register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal having summary criminal jurisdiction in that part of His Majesty's dominions.

(3) The company shall transmit to its registered office a copy of every entry in its dominion register as soon as may be after the entry is made, and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its dominion register.

Every such duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register the shares registered in a dominion register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a dominion register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep a dominion register, and thereupon all entries in that register shall be transferred to some other dominion register kept by the company in the same part ot His Majesty's dominions, or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of dominion registers.

(7) If default is made in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

Stamp duties in case of shares registered in dominion registers.

105. An instrument of transfer of a share registered in a dominion register, other than such a register kept in Northern Ireland, shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from stamp duty chargeable in Great Britain.

Power to extend provisions as to dominion registers to other countries.

106.—(1) The Foreign Jurisdiction Act, 1890, shall have effect as if the last three foregoing sections of this Act were included among the enactments which by virtue of section five of that Act may be applied by Order in Council to foreign countries in which for the time being His Majesty has jurisdiction.

(2) His Majesty may by Order in Council direct that the said sections, including any enactments for the time being in force amending or substituted for those sections, shall extend with or without any exceptions, adaptations or modifications specified in the Order, to any territories under His Majesty's protection to which those sections cannot be extended under the Foreign Jurisdiction Act, 1890, as amended by subsection (1) of this section.

His Majesty may by Order in Council revoke or vary any Order made under this subsection.

Provisions as to branch registers of dominion companies kept in the United Kingdom.

107.—(1) If by virtue of the law in force in any part of His Majesty's Dominions outside Great Britain companies incorporated under that law have power to keep in Great Britain branch registers of their members resident in Great Britain, His Majesty may by Order in Council direct that sections ninety-eight and one hundred of this Act shall, subject to any modifications and adaptations specified in the Order, apply to and in relation to any such branch registers kept in Great Britain as they apply to and in relation to the registers of companies within the meaning of this Act.

(2) For the purposes of this section, the expression "His Majesty's Dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by His Majesty.

Annual Return.

Annual ruturn to be made by company having a share capital.

108.—(1) Every company having a share capital shall once at least in every year make a return containing a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

(2) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and, if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the list must state the amount of stock held by each of the existing members insteaed of the amount of shares and the particulars relating to shares hereinbefore required.

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

(a) The amount of the share capital of the company, and the number of the shares into which it is divided;
(b) The number of shares taken from the commencement of the company up to the date of the return;
(c) The amount called up on each share;
(d) The total amount of calls received;
(e) The total amount of calls unpaid;
(f) The total amount of the sums, if any, paid by way of commission in respect of any shares or debentures;
(g) Particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made;
(h) The total amount of the sums, if any, allowed by way of discount in respect of any debentures, since the date of the last return;
(i) The total number of shares forfeited;
(k) The total amount of shares for which share warrants are outstanding at the date of the return;
(l) The total amount of share warrants issued and surrendered respectively since the date of the last return;
(m) The number of shares comprised in each share warrant;
(n) All such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of the directors of a company;
(o) The total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England would be required to be registered with registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July, nineteen hundred and eight.

(4) The return shall be in accordance with the form set out in the Sixth Schedule to this Act, or as near thereto as circumstances admit.

(5) In the case of a company keeping a dominion register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

109.—(1) Every company not having a share capital shall once at least in every calendar year make a return stating—

Annual return to be made by company not having share capital.

(a) the address of the registered office of the company;

(b) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with repect to directors in the register of directors of a company.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July, nineteen hundred and eight.

General Provisions as to annual returns.

110. (1) The annual return must be contained in a separate part of the register of members, and must be completed within twenty-eight days after the first or only general meeting in the year, and the company must forthwith forward to the registrar of companies a copy signed by a director or by the manager or by the secretary of the company.

(2) Section ninety-eight of this Act shall apply to the annual return as it applies to the register of members.

(3) Except where the company is a private company or is an assurance company which has complied with the provisions of subsection (4) of section seven of the Assurance Companies Act, 1909, the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation :

Provided that, if the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there shall be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended shall be stated thereon.

(4) If a company fails to comply with this section or either of the two last foregoing sections of this Act, the company and every officer of the company who is in default shall be liable to a default fine.

(5) For the purposes of subsection (4) of this section the expression "officer", and for the purposes of the last two foregoing sections of this Act the expression "director", shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Certificates to be sent by private company with annual return.

111. A private company shall send with the annual return required by section one hundred and eight of this Act a certificate signed by a director or the secretary of the company that the company has not, since the date of the last return, or in the case of a first return since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of subsection (1) of section twenty-six of this Act, are not to be included in reckoning the number of fifty.

Meetings and Proceedings.

Annual general meeting.

112.—(1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting.

(2) If default is made in holding a meeting of the company in accordance with the provisions of this section, the company, and every director or manager of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds.

(3) If default is made as aforesaid, the court may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company.

Statutory meeting and statutory report.

113.—(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting."

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act referred to as "the statutory report") to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid ;

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company ;

(d) the names, addresses, and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company ; and

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the registrar of companies for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding fifty pounds.

(10) This section shall not apply to a private company.

Convening of extraordinary general meeting on requisition.

114.—(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section one hundred and seventeen of this Act.

Provisions as to meetings and votes.

115.—(1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:—

(a) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing;

(b) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force;

(c) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting;

(d) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum;

(e) any member elected by the members present at a meeting may be chairman thereof;

(f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Representation of companies at meetings of other companies and of creditors.

116.—(1) A corporation, whether a company within the meaning of this Act or not, may—

(a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor, or holder of debentures, of that other company.

Provisions as to extraordinary and special resolutions.

117—(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll shall be taken to be effectively demanded, if demanded—

(a) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so, however, that it shall not in any case be necessary for more than five members to make the demand; or

(b) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than fifteen per cent. of the paid-up share capital of the company.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of this Act or of the articles of the company.

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

Registration and copies of certain resolutions and agreements.

118.—(1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to the registrar of companies and recorded by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of one shilling or such less sum as the company may direct.

(4) This section shall apply to—

(a) Special resolutions;

(b) Extraordinary resolutions;

(c) Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

(d) Resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members ;

(e) Resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section two hundred and twenty-five of this Act.

(5) If a company fails to comply with subsection (1) of this section the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

(6) If a company fails to comply with subsection (2) or subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(7) For the purposes of the last two foregoing subsections a liquidator of the company shall be deemed to be an officer of the company.

Resolutions passed at adjourned meetings.

119. Where after the commencement of this Act a resolution is passed at an adjourned meeting of—

(a) a company ;

(b) the holders of any class of shares in a company ;

(c) the directors of a company ;

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Minutes of proceedings of meetings and directors.

120.—(1) Every company shall cause minutes of all proceedings of general meetings, and where there are directors or managers, of all proceedings at meetings of its directors or of its managers, to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

Inspection of minute books.

121.—(1) The books containing the minutes of proceedings of any general meeting of a company held after the commencement of this Act shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding sixpence for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

Accounts and Audit.

Keeping of books of account.

122.—(1) Every company shall cause to be kept proper books of account with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place ;

(b) all sales and purchases of goods by the company ;

(c) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

Profit and loss account and balance sheet.

123.—(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months:

Provided that the Board of Trade, if for any special reason they think fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up, and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specially on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specially on a subsequent balance sheet.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless in the opinion of the court dealing with the case, the offence was committed wilfully.

Contents of balance sheet.

124.—(1) Every balance sheet of a company shall contain a summary of the authorised share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets and shall state how the values of the fixed assets have been arrived at.

(2) There shall be stated under separate headings in the balance sheet, so far as they are not written off—

(a) The preliminary expenses of the company; and

(b) any expenses incurred in connection with any issue of share capital or debentures; and

(c) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payble in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents and trade-marks as so shown or ascertained.

(3) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balancs sheet shall include a statement that

that liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured.

(4) The provisions of this section are in addition to other provisions of this Act requiring other matters to be stated in balance sheets.

Assets consisting of shares in subsidiary companies to be set out separately in balance sheet.

125. Where any of the assets of a company consist of shares in, or amounts owing (whether on account of a loan or otherwise) from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance sheet of the first mentioned company separately from all its other assets, and where a company is indebted, whether on account of a loan or otherwise, to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance sheet of that company separately from all its other liabilities.

Balance sheet to include particulars as to subsidiary companies.

126.—(1) Where a company (in this section referred to as "the holding company") holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement, signed by the persons by whom in pursuance of section one hundred and twenty-nine of this Act the balance sheet is signed, stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have, so far as they concern the holding company, been dealt with in, or for the purposes of, the accounts of the holding company, and in particular how, and to what extent,—

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company, or of both; and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

(2) If in the case of a subsidiary company the auditors' report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance sheet shall so report in writing and their report shall be annexed to the balance sheet in lieu of the statement.

Meaning of subsidiary company.

127.—(1) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and—

(a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent. of the issued share capital of that other company or such as to entitle the company to more than fifty per cent. of the voting power in that other company ; or

(b) The company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression "subsidiary company" in this Act means a company in the case of which the conditions of this section are satisfied.

(2) Where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held.

Accounts to contain particulars as to loans to, and remuneration of, directors, &c.

128.—(1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing—

(a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during the said period; and

(b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof; and

(c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company.

(2) The provisions of subsection (1) of this section with respect to loans shall not apply—

(a) in the case of a company the ordinary business of which includes the lending of money, to a loan made by the company in the ordinary course of its business; or

(b) to a loan made by the company to any employee of the company if the loan does not exceed two thousand pounds and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

(3) The provisions of subsection (1) of this section with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

Signing of balance sheet.

129.—(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, and the report shall be read before the company in general meeting, and shall be open to inspection by any member.

(2) In the case of a banking company registered after the fifteenth day of August, eighteen hundred and seventy-nine, the balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of

the company by at least three of these directors, and where there are not more than three directors by all the directors.

(3) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without having a copy of the auditors' report attached thereto, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

Right to receive copies of balance sheets and auditors' report.

130.—(1) In the case of a company not being a private company—

(a) a copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company;

(b) any member of the company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

If default is made in complying with paragraph (a) of this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty pounds, and if, where any person makes a demand for a document with which he is by virtue of paragraph (b) of this subsection entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues, unless it is proved that, that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be liable to a default fine.

Banking and certain other companies to publish periodical statement.

131.—(1) Every company, being a limited banking company or an insurance company or a deposit, provident, or benefit society, shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in the Seventh Schedule to this Act, or as near thereto as circumstances admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

(4) If default is made in complying with this section, the company and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(5) For the purposes of this Act a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

(6) This section shall not apply to any assurance company to which the provisions of the Assurance Companies Act, 1909, as to the accounts and balance sheet to be prepared annually and deposited by such a company apply if the company complies with those provisions.

Appointment and remuneration of auditors.

132.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year.

(3) A person other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the members, either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting :

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, by sent or given at the same time as the notice of the annual general meeting.

(4) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting :

Provided that—

(a) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than seven days before the date of the meeting ; and

(b) If the directors fail to exercise their powers under this subsection, ihe company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(5) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(6) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Board of Trade may be fixed by the Board.

Disqualification for appointment as auditor.

133.—(1) None of the following persons shall be qualified for appointment as auditor of a company—

(a) a director or officer of the company ;

(b) except where the company is a private company, a person who is a partner of or in the employment of an officer of the company ;

(c) a body corporate.

(2) Nothing in this section shall disqualify a body corporate from acting as auditor of a company if acting under an appointment made before the third day of August, nineteen hundred and twenty-eight, but subject as aforesaid any body corporate which acts as auditor of a company shall be liable to a fine not exceeding one hundred pounds.

(3) In the application of this section to Scotland the expression "body corporate" does not include a firm.

Auditors' report and auditors' right of

134.—(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(a) whether or not they have obtained all the information and explanations they have required ; and

access to books and right to attend general meetings.

(b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors:

Provided that, in the case of a banking company which was registered after the fifteenth day of August, eighteen hundred and seventy-nine, and which has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies and extracts from such books and accounts of any such branch as have been transmitted to the head office of the company in Great Britain.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

Inspection.

Investigation of affairs of company by Board of Trade inspectors.

135.—(1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct—

(a) In the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued:

(b) In the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued:

(c) In the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation, and the Board may, before appointing an inspector, require the applicants to give security, to an amount not exceeding one hundred pounds, for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their hand to the court, and the court may thereupon enquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the Board direct.

Proceedings on report by inspectors.

136.—(1) If from any report made under the last foregoing section it appears to the Board of Trade that any person has been guilty of any offence in relation to the company for which he is criminally liable the Board shall proceed as follows:—

(i) in the case of an offence in England, if it appears to the Board that the case is one in which the prosecution ought to be undertaken by the Director of Public Prosecutions, the Board shall refer the matter to him;

(ii) in the case of an offence in Scotland the Board shall refer the matter to the Lord Advocate.

(2) If where any matter is referred to the Director of Public Prosecutions under this section he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty or all officers and agents of the company, past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

For the purposes of this subsection the expression "agents" in relation to a company shall be deemed to include the bankers and solicitors of the company and any person employed by the company as auditors, whether those persons are or are not officers of the company.

(3) The expenses of and incidental to an investigation under the last preceding section of this Act (in this subsection referred to as "the expenses") shall be defrayed as follows :—

(a) Where as a result of the investigation a prosecution is instituted by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, the expenses shall be defrayed by the Board of Trade ;

(b) In any other case the expenses shall be defrayed by the company unless the Board of Trade think proper to direct, as the Board are hereby authorised to do, that they shall either be paid by the applicants or in part by the company and in part by the applicants :
Provided that—

(i) if the company fails to pay the whole or any part of the sum which it is liable to pay under this subsection, the applicants shall make good the deficiency up to the amount by which the security given by them under the last preceding section exceeds the amount, if any, which they have under this subsection been directed by the Board to pay ; and

(ii) any balance of the expenses not defrayed either by the company or the applicants shall be defrayed by the Board.

(4) Subsection (3) of section thirteen of the Economy (Miscellaneous Provisions) Act, 1926(which provides for the issue out of the Bankruptcy and Companies Winding-up (Fees) Account of sums towards meeting the charges estimated by the Board of Trade in respect of salaries and expenses under this Act in relation to the winding-up of companies in England) shall have effect as if expenses to be defrayed by the Board under this section were expenses incurred by the Board under this Act in relation to the winding-up of companies in England.

Power of company to appoint inspectors.

137.—(1) A company may by special revolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Board of Trade, except that, instead of reporting to the Board, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Board of Trade.

Report of inspectors to be evidence.

138.—A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Directors and Managers.

Number of directors.

136.—(1) Every company registered after the commencement of this Act shall have at least two directors.

(2) This section shall not apply to a private company.

Restrictions on appointment or advertisement of director.

140.—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(a) signed and delivered to the registrar of companies for registration a consent in writing to act as such director; and

(b) either—

(i) signed the memorandum for a number of shares not less than his qualification, if any; or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or

(iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and delivered to the registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.

(4) This section shall not apply to—

(a) a company not having a share capital; or

(b) a private company; or

(c) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

Qualification of director or manager.

141.—(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated of the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

Provisions as to undischarged bankrupts acting as directors.

142.—(1) If any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court by which he was adjudged bankrupt, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to fine not exceeding five hundred pounds, or to both such imprisonment and fine :

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was on the third day of August, nineteen hundred and twenty-eight, acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part, or been concerned since that date and the bankruptcy was prior to that date.

(2) In England the leave of the court for the purpose of this section shall not be given unless notice of intention to apply therefor has been served on the official receiver and it shall be the duty of the official receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section the expression "company" includes an unregistered company and a company incorporated outside Great Britain which has an established place of business within Great Britain, and the expression "official receiver" means the official receiver in bankruptcy.

(4) Subsection (1) of this section in its application to Scotland shall have effect as if the words "sequestration of his estates was awarded" were substituted for the words "he was adjudged bankrupt."

Validity of acts of directors.

143. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Register of directors.

144.—(1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars, that is to say—

(a) in the case of an individual, his present christian name and surname, any former christian name or surname, his usual residential address, his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships ; and

(b) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall, within the periods respectively mentioned in this subsection, send to the registrar of companies a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in any of the particulars contained in the register.

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company, and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

(5) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(6) For the purposes of this section a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

Particulars with respect to directors in trade catalogues circulars, &c.

145.—(1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of His Majesty's dominions, state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars—

(a) his present christian name, or the initals thereof, and present surname;

(b) any former christain names and surnames;

(c) his nationlity, if not British;

(d) his nationaliy of origin, if his nationality is not the nationality of origin:

Provided that, if special circumstances exist which render it in the opinion of the Board of Trade expedient that such an exemption should be granted, the Board may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) This section shall apply to—

(a) Every company registered under this Act or the Acts repealed by this Act unless it was registered before the twenty-third day of November, nineteen hundred and sixteen; and

(b) every company incorporated outside Great Britain which has an established place of business within Great Britain, unless it had established such a place of business before the said date; and

(c) every company licensed under the Moneylenders Act, 1927, whenever it was registered or whenever it established a place of business.

(3) If a company makes default in complying with this section, every director of the company shall be liable on summary convication for each offence to a fine not exceeding five pounds, and, in the case of a director being a corporation, every director, secretary and officer of the corporation, who is knowingly a party to the default, shall be liable to a like penalty:

Provided that in England no proceedings shall be instituted under this section except by, or with the consent of, the Board of Trade.

(4) For the purposes of this section—

(a) the expression "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

(b) the expression "christian name" includes a forename;

(c) the expression "initials" includes a recognised abbreviation of a christian name;

(d) in the case of a peer or person usually known by a title different from his surname, the expressin "surname" means that title;

(e) references to a former christian name or surname do not include—

(i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(ii) in the case of natural born British subjects, a former christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years; or

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage;

(f) the expression "showcards" means cards containing or exhibiting articles dealt with, or samples or representations thereof.

Limited company may have directors with unlimited liability.

146.—(1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company, if any, and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary, if any, of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Special resolution of limited company making liability of directors unlimited.

147.—(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director.

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

Statement as to remuneration of directors to be furnished to shareholders.

148.—(1) Subject as hereinafter provided, the directors of a company shall, on a demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement, certified as correct, or with such qualifications as may be necessary, by the auditors of the company, showing as respects each of the last three preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is—

(a) a director of any other company which is in relation to the first-mentioned company a subsidiary company ; or

(b) by virtue of the nomination, whether direct or indirect, of the company a director of any other company ;

be included in the said aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of, that other company :

Proided that—

(i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished ; and

(ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(2) In computing for the purpose of this section the amount of any remuneration or emoluments received by any director, the amount actually received by him shall, if the company has paid on his behalf any sum by way of income tax (including super-tax and sur-tax) in respect of the remuneration or emoluments be increased by the amount of the sum so paid.

(3) If any director fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty pounds.

(4) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

Disclosure by directors of interest in contracts.

149.—(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he becomes so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding one hundred pounds.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

Provision as to payments received by directors for loss of office or on retirement.

150.—(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company the amount received shall be deemed to have been received by him in trust for the company.

(3) Where a payment is to be made as aforesaid to a director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(4) If any such director fails to take reasonable steps as aforesaid, or if any person who has been properly required by any such director to include the said particulars in or send them with any such notice fails so to do, he shall be liable to a fine not exceeding twenty-five pounds, and if the requirements of the last foregoing subsection are not complied with in relation to any such payment as is mentioned in the said subsection, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

(5) If in connection with any such transfer as aforesaid the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

151. **Provisions as to assignment of office by directors.** If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a direct or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

Avoidance of Provisions in Articles or Contracts relieving Officers from Liability.

152. **Provisions as to liability of officers and auditors.** Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :

Provided that—

(a) in relation to any such provision which is in force at the date of the commencement of this Act, this section shall have effect only on the expiration of a period of six months from that date; and

(b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section three hundred and seventy-two of this Act in which relief is granted to him by the court.

Arrangement and Reconstructions.

153—(1) **Power to compromise with creditors and members.** Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company,

(3) An order made under subsection (2) of this section shall have no effect until an office copy of the order has been delivered to the registrar of companies for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituing or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(5) In this section the expression "company" means any company liable to be wound up under this Act, and the expression "arrangement" includes a re-organisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

Provisions for facilitating reconstruction and amalgamation of companies.

154.—(1) Where an application is made to the court under the last foregoing section of this Act for the sanctioning of a compromise or arrangement proposed between a company and any such person as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company") the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters :—

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company ;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person ;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;

(d) the dissolution, without winding up, of any transferor company ;

(e) the provision to be made for any persons, who within such time and in such mannar as the court direct, dissent from the compromise or arrangement ;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabiliities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the registrar of companies for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(5) Notwithstanding the provisions of subsection (5) of the last foregoing section, the expression "company" in this section does not include any company other than a company within the meaning of this Act.

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

155.—(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company :

Provided that, where any such scheme or contract has been so approved at any time before the commencement of this Act, the court may by order, on an application made to it by the transferee company within two months after the commencement of this Act, authorise notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the court may by the order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

PART V.

Winding up.

(i) Preliminary.

Modes of Winding up.

Modes of winding up.

156.—(1) The winding up of a company may be either—

(a) by the court; or

(b) voluntary; or

(c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories.

Liability as contributories of present and past members.

157.—(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) of this section and the following qualifications:—

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up:

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member:

(c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up:

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individua members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract :

(g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company :

Provided that—

(a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up :

(b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office :

(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the events of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of contributory.

158. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceeding prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

159. The liability of a contributory shall create a debt (in England of the nature a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of member.

160.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, and the heirs and legatees of heritage of his heritable estate in Scotland, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or legatees of heritage need not be added, but they may be added as and when the Court thinks fit.

(3) If in England the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereout of the money due.

Contributories in case of bankruptcy of member.

161. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

(1) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his asset in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company ; and

(2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Provision as to married women.

162.—(1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

(ii) Winding Up by the Court.

Jurisdiction.

Jurisdiction to wind up companies registered in England.

163.—(1) The High Court shall have jurisdiction to wind up any company registered in England.

(2) In the case of a company whose registered office is situate within the jurisdiction of the Chancery Court of the County Palatine of Lancaster or the Chancery Court of the County Palatine of Durham, the Palatine Court shall have concurrent jurisdiction with the High Court to wind up the company.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, the county court of the district in which the registered office of the company is situate shall, subject to the provisions of this section have concurrent jurisdiction with the High Court to wind up the company.

(4) Where a company is formed for working mines within the stannaries and is not shown to be working mines beyond the limits of the stannaries or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, the court exercising the stannaries jurisdiction shall, whatever may be the amount of the capital of the company and wherever the registered office of the company is situate, have concurrent jurisdiction with the High Court to wind up the company.

(5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may revoke or vary any such order.

In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannarise Jurisdiction (Abolition) Act, 1896.

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceeding the presentation of the petition for winding up.

Conduct of winding up business in High Court in England.

164.—(1) Subject to any order made under section fifty-seven or section sixty A. of the Supreme Court of Judicature (Consolidation) Act, 1925, and without prejudice to the power to make orders of transfer under that Act, the jurisdiction of the High Court to wind up companies in England under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign for the purpose or by the judge or judges for the time being exercising the bankruptcy jurisdiction of the High Court.

(2) The Lord Chancellor may give directions as aforesaid either generally or with respect to any specified classes of cases.

(3) Provision may be made by general rules for regulating the exercise of the said jurisdiction of the High Court under this Act,

Transfer of proceedings from one court to another and statement of case by county court.

165.—(1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that Court.

(3) If any question arises in any winding up peoceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purpose of the determination.

Jurisdiction to wind up companies in Scotland.

166.—(1) The Court of Session shall have jurisdiction to wind up any company registered in Scotland.

(2) When the Court of Session is in vacation the juridiction conferred on that court by this section may, subject to the provisions of this Act, be exercised by the Lord Ordinary on the Bills.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, the sheriff court of the sheriffdom in which the registered office of the company is situate shall have concurrent jurisdiction with the Court of Session to wind up the company :

Provided that—

(a) it shall be fawful for the Court of Session, if it appears to the court having regard to the amount of the assests of the company expedient to do so, to remit to any sheriff court any petition presented to the Court of Session for winding up any such company, or to require any such pettion presented to a sheriff court to be remitted to the Court of Session ; and

(b) it shall be lawful for the Court of Session to require that any such petition as aforesaid presented to one sheriff court be remitted to another sheriff court ; and

(c) in a winding up in the sheriff court it shall be lawful for the sheriff court to submit a stated case for the opinion of the Court of Session on any question of law arising in that winding up.

(4) For the purposes of this section, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

Power in Scotland to remit winding up to Lord Ordinary.

167. Where the Court of Session makes a winding up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to him accordingly, and thereupon that Lord Ordinary, shall, for the purposes of the winding up, have all the powers and jurisdiction of the court :

Provided that the Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up.

Cases in which Company may be wound up by Court.

Circumstances in which

168. A company may be wound up by the court if—

(1) the company has by special resolution resolved that the company be wound up by the court :

(2) default is made in delivering the statutory report to the registrar or in holding the statutory meeting :

company may be wound up by court.

(3) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

(4) the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven:

(5) the company is unable to pay its debts:

(6) the court is of opinion that it is just and equitable that the company should be wound up.

169. A company shall be deemed to be unable to pay its debts—

Definition of inability to pay debts.

(1) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(2) if, in England or Northern Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(3) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; or

(4) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Petition for Winding Up and Effects thereof.

Provisions as to applications for winding up.

170.—(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that—

(a) A contributory shall not be entitled to present a winding-up petition unless—

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(b) A winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(c) The Court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the Court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a winding-up petition may be presented by the official receiver attached to the Court as well as by any other person authorised in that behalf under the other provisions of this section, but the Court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months mentioned in proviso (a) (ii) to subsection (1) of this section been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

Powers of court on hearing petition.

171.—(1) On hearing a winding-up petition the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in delivering the statutory report to the registrar or in holding the statutory meeting the Court may—

(a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held ; and

(b) order the cost to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Power to stay or restrain proceedings against company.

172. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—

(a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Northern Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein ; and

(b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding ;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property, &c. after commencement of winding up.

173. In a winding up by the court, any diposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Avoidance of attachments, &c. in case of English company and in case of effects in England of Scottish company.

174.—(1) Where any company registered in England is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

(2) The provisions of this section shall so far as relates to any estate or effects of the company situate in England, apply in the case of a company registered in Scotland as it applies in the case of a company registered in England.

Commencement of Winding Up.

Commencement of winding up by the court.

175.—(1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Consequences of Winding-up Order.

176. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute thereof in his books relating to the company.

Copy of order to be forwarded to registrar.

177. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

Action stayed on winding-up order.

178. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Effect of winding-up order.

Official Receiver in English Winding Up.

179.—(1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term "official receiver" means the official receiver, if any, attached to the court for bankruptcy purposes, or if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board.

Official receiver in bankruptcy to be official receiver for winding-up purposes.

(2) Any such officer shall for the purpose of his duties under this Act be styled "the official receiver."

180. If in the case of the winding up of any company by the court in England it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer, other than the person who would by virtue of the last foregoing section of this Act be the official receiver, should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Act.

Appointment of official receiver by court in certain cases.

181.—(1) Where the court in England has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

Statement of company's affairs to be submitted to official receiver.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

(a) who are or have been directors or officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year and are in the opinion of the official receiver capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company, which is or within the said year was an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(8) In this section the expression "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

Report by official receiver.

182.—(1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the last foregoing section, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court—

(a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in sections two hundred and sixteen and two hundred and seventeen of this Act.

Liquidators.

Power of court to appoint liquidators.

183. For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

Appointment and powers of provisional liquidator.

184.—(1) Subject to the provision of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding up petition.

(2) Where the proceedings are in England, the appointment of a provisional liduidator may be made at any time before the making of a winding up order and either the official receiver or any other fit person may be appointed.

(3) Where the proceedings are in Scotland, the appointment of a provisional liquidator may be made at any time before the first appointment of liquidators.

(4) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

185. The following provisions with respect to liquidators shall have effect on a winding-up order being made in England :—

Appointment, style, &c. of liquidators in England.

(1) The official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such :

(2) The official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver :

(3) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit :

(4) In a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company :

(5) The official receiver shall by virtue of his office be the liquidator during any vacancy :

(6) A liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator," and, where the official receiver is liquidator, by the style of "the official receiver and liquidator," of the particular company in respect of which he is appointed, and not by his individual name.

186. Where in the winding up of a company by the court in England a person other than the official receiver is appointed liquidator, that person—

Provisions where person other than official receiver is appointed liquidator.

(1) shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade :

(2) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

187. The following provisions with respect to the liquidators shall have effect in a winding up by the court in Scotland :—

Provision as to liquidators in Scotland.

(1) The court may determine whether any and what security is to be given by a liquidator on his appointment :

(2) A liquidator shall be described by the style of "the official liquidator" of the particular company in respect of which he is appointed and not by his individual name :

(3) Where an order has been made for winding up a company subject to supervision, and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

188.—(1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

General provisions as to liquidators.

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section two hundred and seventy-eight of this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of company's property.

189.—(1) Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

Vesting of property of company in liquidator.

190. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Powers of liquidator.

191.—(1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection—

(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company:

(b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof:

(c) to appoint a solicitor or law agent to assist him in the performance of his duties:

(d) to pay any classes of creditors in full:

(e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable:

(f) to compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the court shall have power—

(a) to sell the real and personal property, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal:

(c) to prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and reteably with the other separate creditors:

(d) to draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business :

(e) to raise on the security of the assets of the company any money requisite :

(f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself :

(g) to appoint an agent to do any business which the liquidator is unable to do himself :

(h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section, shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4) In the case of a winding up in Scotland the court may provide by any order that the liquidator may, where there is no committee of inspection, exercise any of the powers mentioned in paragraph (a) or paragraph (b) of sub-section (1) of this section without the sanction or intervention of the court.

(5) In a winding up by the court in Scotland the liquidator shall, subject to general rules, have the same powers as a trustee on a bankrupt estate.

Exercise and contról of liquidator's powers in England.

192.—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at suct times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, my direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises at it thinks just.

Books to be kept by liquidator in England.

193. Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Payments of liquidator in England into bank.

194.—(1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid :

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retaines for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator in his private banking account.

Audit of liquidator's accounts in England.

195.—(1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Control of Board of Trade over liquidators in England.

196.—(1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

Release of liquidators in England.

197.—(1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a liquidator is withheld the court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Committees of Inspection.

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.

198.—(1) When a winding up order has been made by the court in England, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) When a winding up order has been made by the court in Scotland, the liquidator shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be the members of the committee if appointed:

Provided that, where the winding-up order has been made on the ground that the company is unable to pay its debts, it shall not be necessary for the liquidator to summon a meeting of the contributories.

(3) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit.

Constitution and proceedings of committee of inspection.

199.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court:

Provided that, where in Scotland a winding up order has been made on the ground that a company is unable to pay its debts, the committee shall consist of creditors or persons holding general powers of attorney from creditors.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occuring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the

vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act, notwithstanding any vacancy in the committee.

200. **Powers of Board of Trade in England where no committee of inspection.** Where in the case of a winding up in England there is no committee of inspection, the Board of Trade may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

201. **Additional powers of committee of inspection in Scotland.** In the case of a winding up in Scotland, the committee of inspection shall, in addition to the powers and duties conferred and imposed on it by this Act, have such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on committees of inspection by general rules.

General Powers of Court in case of Winding-up by Court.

202.—(1) **Power to stay winding up.** The court may at any time after an order for winding up, on the application either of the liquidator, or the official receiver, or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

203. **Settlement of list of contributories and application of assets.** (1) As soon as may be after making a winding up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representative of or liable for the debts of others.

204. **Delivery of property to liquidator.** The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is primâ facie entitled.

205.—(1) **Payment of debts due by contributory to company and extent to which set off allowed.** The court may at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may—

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of court to make calls.

206.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into Bank of moneys due to company.

207.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on contributory conclusive evidence.

208.—(1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings, except proceedings in Scotland against the heritable estate of a deceased contributory, in which case the order shall be only primâ facie evidence for the purpose of charging his heritable estate, unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

Appointment in England of special manager.

209.—(1) Where in proceedings in England the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application, appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power to exclude creditors not proving in time.

210. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories.

211. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Inspection of books by creditors and contributories.

212. The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

213. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

Power to order costs of winding up to be paid out of assets.

214.—(1) The court may at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

Power to summon persons suspected of having property of company.

(2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

215. In the winding up by the court of a company registered in Scotland, the court shall have power to require the attendance of any director or other officer of the company at any meeting of creditors or of contributories or of a committee of inspection for the purpose of giving information as to the trade, dealings, affairs or property of the company.

Attendance of director of company at meetings of creditors, &c. in Scotland.

216.—(1) Where an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that the person, director or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

Power in England to order public examination of promoters, directors, &c.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witness called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a Palatine Court, before a registrar of that court and the powers of the court under this section may be exercised by the person before whom the examination is held.

Power in England to restrain fraudulent persons from managing companies.

217.—(1) Where an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, on the application of the official receiver, order that the person, director or officer shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the report as may be specified in the order.

(2) The official receiver shall, where he intends to make an application under the last foregoing subsection, give not less than ten days' notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.

(3) It shall be the duty of the official receiver to appear on the hearing of an application by him for an order under this section and on an application for leave under this section and to call the attention of the court to any matters which appear to him to be relevant, and on any such application the official receiver may himself give evidence or call witnesses.

(4) If any person acts in contravention of an order made under this section he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

Power to arrest absconding contributory.

218. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court may order.

Powers of court cumulative.

219. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Delegation to liquida-

220. Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act in respect of the following matters—

tor of certain powers of court in England.

(1) the holding and conducting of meetings to ascertain the wishes of creditors and contributories ;

(2) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets ;

(3) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator ;

(4) the making of calls ;

(5) the fixing of a time within which debts and claims must be proved ;

to be exercised or performed by the liquidator as an officer of the court and subject to the control of the court :

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Dissolution of company.

221.—(1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall within fourteen days from the date thereof be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

Enforcement of and Appeal from Orders.

Order for calls on contributories in Scotland.

222.—(1) Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the said amount became due, to pronounce forthwith a decree against those contributories for payment of the sums so cretified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest.

(2) Any such decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the court.

Enforcement throughout United Kingdom of orders made in winding up.

223.—(1) Any order made by the court in England for or in the course of winding up a company shall be enforced in Scotland and Northern Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Northern Ireland and in the same manner in all respects as if the order had been made by those courts.

(2) In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Northern Ireland by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, inlerlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

Appeals from orders in Scotland.

224.—(1) Subject to the provisions of this section and to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court in Scotland under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

(2) In regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the Bills in vacation—

(a) no order or judgment under the provisions of this Act specified in the First Part of the Eighth Schedule to this Act shall be subject to review, reduction, suspension, or stay of execution ; and

(b) every other order or judgment (except as hereinafter mentioned) shall be subject to review only by reclaiming note, in common form, presented within fourteen days from the date of the order or judgment :

Provided that orders or judgments under the provisions of this Act specified in the Second Part of the Eighth Schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the court.

(3) In regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding up has been remitted, any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the Bills in vacation shall apply to the order or judgment.

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

(iii) Voluntary Winding Up.

Resolutions for, and commencement of Voluntary Winding Up.

Circumstances in which company may be wound up voluntarily.

225.—(1) A company may be wound up voluntarily—

(a) When the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily :

(b) If the company resolves by special resolution that the company be wound up voluntarily :

(c) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act the expression "a resolution for voluntary winding up" means a resolution passed under any of the provisions of subsection (1) of this section.

Notice of resolution to wind up voluntarily.

226.—(1) When a company has passed a resolution for voluntary winding up, it shall, within seven days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Commencement of voluntary winding up.

227. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

Consequences of Voluntary Winding Up.

Effect of voluntary winding up on business and status of company.

228. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof :

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

229. **Avoidance of transfers, &c., after commencement of voluntary winding up.** Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Declaration of Solvency.

230.—**Statutory declaration of solvency in case of proposal to wind up voluntarily.** (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding up.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless it is delivered to the registrar of companies for registration before the date mentioned in subsection (1) of this section.

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a members' voluntary winding up," and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up."

Provisions applicable to a Members' Voluntary Winding up.

231. **Provisions applicable to a members' winding up.** The provisions contained in the five sections of this Act next following shall apply in relation to a members' voluntary winding up.

232.—**Power of company to appoint and fix remuneration of liquidator.** (1) The company in general meeting shall appoint one or more *liquidators* for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

233.—**Power to fill vacancy in office of liquidator.** (1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

234.—**Power of liquidator to accept shares, &c. as consideration for sale of property of company.** (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company") the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the tarnsferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act, and in the construction of those provisions this Act shall be deemed to be the special Act, and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

Duty of liquidator to call general meeting at end of each year.

235.—(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

Final meeting and dissolution.

236.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with the subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues :

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Provisions applicable to a Creditors' Voluntary Winding Up.

237. **Provisions applicable to a creditors' winding up.** The provisions contained in the eight sections of this Act next following shall apply in relation to a creditors' voluntary winding up.

238.—(1) **Meeting of creditors.** The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid ; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it has been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

(a) by the company in complying with subsections (1) and (2) of this section ;

(b) by the directors of the company in complying with subsection (3) of this section ;

(c) by any director of the company in complying with subsection (4) of this section ;

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one hundred pounds, and in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

239. **Appointment of liquidator.** The creditors and the company at their respective meetings mentioned in the last foregoing section of this Act may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominated different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator :

Provided that in the case of different persons being nominated any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment of committee of inspection.

240.—(1) The creditors at the meeting to be held in pursuance of section two hundred and thirty-eight of this Act or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of sections one hundred and ninety-nine [except subsection (1)] and two hundred and one of this Act shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

Fixing of liquidators' remuneration and cesser of directors' powers.

241.—(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

Power to fill vacancy in office of liquidator.

242. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

Application of s. 234 to a creditors' voluntary winding up.

243. The provisions of section two hundred and thirty-four of this Act shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection.

Duty of liquidator to call meetings of company and of creditors at end of each year.

244.—(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section he shall be liable to a fine not exceeding ten pounds.

Final meeting and dissolution.

245.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues :

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of the meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be desolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Provisions applicable to every Voluntary Winding Up.

Provisions applicable to every voluntary winding up.

246. The provisions contained in the nine sections of this Act next following shall apply to every voluntary winding up whether a members' or a creditors' winding up.

Distribution of property of company.

247. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities pari passu,. and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and duties of liquidator in voluntary winding up.

248.—(1) The liquidator may—

(a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the commitee of inspection, exercise any of the powers given by paragraphs (d), (e) and (f) of subsection (l) of section one hundred and ninety-one of this Act to a liquidator in a winding up by the court :

(b) without the sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court :

(c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories :

(d) exercise the power of the court of making calls :

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

Power of court to appoint and remove liquidator in voluntary winding up.

249.—(1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment.

250.—(1)—The liquidator shall, within twenty-one days after his appointment, deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by the Board of Trade.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Arrangement when binding on creditors.

251.—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Power to apply to court to have questions determined or powers exercised.

252.—(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required evercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

Power of court in Scotland to stay proceedings against company.

253.—(1) If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the commencement of this Act with respect to the staying of proceedings against a company registered in England and in course of being wound up.

Costs of voluntary winding up.

254.—All costs, charges, and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Saving for rights of creditors and contributories.

255. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

(iv) Winding Up subject to Supervision of Court.

Power to order winding up subject to supervision.

256. When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just.

257. **Effect of petition for winding up subject to supervision.** A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

258. **Application of ss. 173 and 174 to winding up subject to supervision.** A winding up subject to the supervision of the court shall, for the purposes of sections one hundred and seventy-three and one hundred and seventy-four of this Act, be deemed to be a winding up by the court.

259.—(1) **Power of court to appoint or remove liquidators.** Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

260.—(1) **Effect of supervision order.** Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in paragraphs (d), (e) and (f) of subsection (1) of section one hundred and ninety-one of this Act shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Act which are set out in the Ninth Schedule to this Act, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court:

Provided that where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section one hundred and ninety-nine (except subsection (1) thereof) and section two hundred and one of this Act, except in so far as the operation of those sections is excluded in a voluntary winding up by general rules.

(v) Provisions applicable to every Mode of Winding Up.

Proof and Ranking of Claims.

261. **Debts of all descriptions to be proved.** In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

262. **Application of bankruptcy rules** In the winding up of an insolvent company registered in England the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and fufure and contingent liabilities as are in force for

in winding up of insolvent English companies. the time being under the law of bankruptcy in England with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

263. **Ranking of claims in Scotland.** In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act, 1913, that is to say,

(a) the provisions of sections forty-five to sixty-two regarding voting and ranking for payment of dividends ;

(b) sections ninety-six and one hundred and five, which respectively relate to the reckoning of majorities and to the interruption of prescription ;

shall so far as is consistent with this Act apply in like manner as they apply in the sequestration of a bankrupt's estate, with the substitution of references to winding up for references to sequestration, of references to the court for references to the sheriff, of references to the liquidator for references to the trustee, and of references to the company for references to the bankrupt, and with any other necessary modifications.

264.—(1) **Preferential payments.** In a winding up there shall be paid in priority to all other debts—

(a) All parochial or other local rates due from the company at the relevant date, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment ;

(b) All wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date, not exceeding fifty pounds ;

(c) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months next before the relevant date :

Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date ;

(d) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has at the commencement of the winding up under such a contract with insurers as is mentioned in section seven of the Workmen's Compensation Act, 1985, rights capable of being transferred to and vested in the workman, all amounts due in respect af any compensation or liability for compensation under the said Act accrued before the relevant date ;

(e) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due in respect of contributions payable during the twelve months next before the relevant date by the company as the employer of any persons under either—

(i) the National Health Insurance Acts, 1924 to 1928 ; or

(ii) the Widows', Orphans' and Old Age Contributory Pensions Act, 1925 ; or

(iii) the Unemployment Insurance Act, 1920 to 1929.

(2) Where any compensation under the Workmen's Compensation Act, 1925, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (d) of sub-section (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(3) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced

by some person for that purpose, that person shall in a winding up have a right o priority in respect of the money so advanced and paid up to the amount by which th sum in respect of which that clerk, servant, workman or labourer would have bee entitled to priority in the winding up has been diminished by reason of the paymen having been made.

(4) The foregoing debts shall—

(a) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions ; and

(b) In the case of a company registered in England, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(5) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by paragraph (e) of subsection (1) of this section formal proof thereof shall not be required except in so far as is otherwise provided by general rules.

(6) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(7) In this section the expression "the relevant date" means—

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order ; and

(b) in any other case, the date of the commencement of the winding up.

Effect of Winding Up on antecedent and other Transactions.

Fraudulent preference.

265.—(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy, a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

(4) In the application to Scotland of this section the expression "fraudulent preference" includes any alienation or preference which is voidable by statute or at common law on the ground of insolvency or notour bankruptcy, and the expressiion "bankruptcy petition" means petition for sequestration.

Effect of floating charge.

266. Where a company is being wound up, a floating charge on the undertaking or property of the company created within six month of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

Disclaimer of onerous property in case of

267.—(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that

company wound up in England. he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property :

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such as application as aforesaid, does not within the said period or further period, disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a charges by way of legal mortagage, except upon the terms of making that person—

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ; or

(b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no persons claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's convenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

(8) This section shall not apply in the case of a winding up in Scotland.

Restriction of rights of creditor as to execution or attachment in case of company being wound up in England.

268.—(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up :

Provided that—

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up ; and

(b) a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

(4) This section shall not apply in the case of a winding up in Scotland.

Duties of sheriff as to goods taken in execution.

269.—(1) Where any goods of a company are taken in execution and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgment for a sum exceeding twenty pounds the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

(4) This section shall not apply in the case of a winding up in Scotland.

Effect of diligence within 60 days of winding up

270.—(1) In the winding up of a company registered in Scotland, the following provisions shall have effect :—

(a) The winding up shall, as at the date of the commencement thereof, be equivalent to an arrestment in execusion and decree of furthcoming, and to an executed or completed poinding, and no arrestment or poinding of the funds or effects of the company executed on or after the sixtieth day prior to that date shall be effectual, and those funds or effects or the proceeds of those effects if sold shall be made furthcoming to the liquidator :

in case of Scottish company, and in case of effects in Scotland of English company.

Provided that any arrester or poinder before that date, who is thus deprived of the benefit of his diligence shall have preference out of those funds or effects for the expense bona fide incurred by him in such diligence :

(b) The winding up shall, as at the date aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said date, subject to such preferable heritable rights and securities as existed at the said date and are valid and unchallengeable, and the right to poind the ground hereinafter provided :

(c) The provisions of sections one hundred and eight to one hundred and thirteen and of section one hundred and sixteen of the Bankruptcy (Scotland) Act, 1913, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid ; and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding up" and "liquidator" ; and the expression "the Lord Ordinary or the court" shall mean "the court" as defined by this Act with respect to Scotland :

(d) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the date aforesaid shall, except to the extent hereinafter provided, be available in any question with the liquidator :

Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the date aforesaid, but that poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

(2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in Scotland, apply in the case of a company registered in England as it applies in the case of a company registered in Scotland.

Offences antecedent to or in course of Winding up.

Offences by officers of companies in liquidation.

271.—(1) If any person, being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company ; or

(b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up ; or

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up ; or

(d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of ten pounds or upwards, or conceals any debt due to or from the company ; or

(e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of ten pounds or upwards ; or

(f) makes any material omission in any statement relating to the affairs of the company ; or

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof ; or

(h) after the commencement of the winding up prevents the production of any book or affecting or relating to the property or affairs of the company; or

(i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company; or

(j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company; or

(l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

he shall be guilty of a misdemeanour and shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, be liable on conviction on indictment to penal servitude for a term not exceeding five years, or on summary conviction to imprisonment for a term not exceeding twelve months, and in the case of any other offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months:

Provided that it shall be a good defence to a charge under any of paragraphs (a) (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under paragraph (o) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid shall be guilty of a misdemeanour, and on conviction thereof liable—

(a) in England to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour;

(b) in Scotland on conviction on indictment to penal servitude for a period not exceeding seven years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

(3) For the purposes of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for falsification of books.

272. If any director, manager or other officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Frauds by officers of companies which have gone into liquidation.

273. If any person, being at the time of the commission of the alleged offence a director, manager or other officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

(a) has by false pretences or by means of any other fraud induced any person to give credit to the company;

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against the property of the company;

(c) with intent to defraud creditors of the company, has concealed or removed any party of the property of the company since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against the company;

he shall be guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months.

Liability where proper accounts not kept.

274.—(1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction on indictment to imprisonment for a term not exceeding one year, or on summary conviction to imprisonment for a term not exceeding six months.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and those buyers and sellers to be identified.

Responsibility of directors for fraudulent trading.

275.—(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, company or person, and

may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection the expression "assignee" includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment to imprisonment for a term not exceeding one year.

(4) The court may, in the case of any person in respect of whom a declaration has been made under subsection (1) of this section, or who has been convicted of an offence under subsection (3) of this section, order that, that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period not exceeding five years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

In this subsection the expression "the court" in relation to the making of an order, means the court by which the declaration was made or the court before which the person was convicted as the case may be, and in relation to the granting of leave means any court having jurisdiction to wind up the company.

(5) For the purposes of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

(6) The provisions of this section shall have effect notwithstanding the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection *(1) of this* section is made in the case of a winding up in England, the declaration shall be deemed to be a final judgment within the meaning paragraph (g) of subsection (1) of section one of the Bankruptcy Act, 1914.

(7) It shall be the duty of the official receiver or of the liquidator to appear on the hearing of an application for leave under subsection (4) of this section, and on the hearing of an application under that subsection or under subsection (1) of this section the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

Power of court to assess damages against delinquent directors, &c.

276.—(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section one of the Bankruptcy Act, 1914.

Prosecution of delinquent officers and members of company.

277.—(1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator—

(a) in the case of a winding up in England either himself to prosecute the offender or to refer the matter to the Director of Public Prosecutions :

(b) in the case of a winding up in Scotland to refer the matter to the Lord Advocate.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate, and shall furnish to the Director or Lord Advocate, as the case may be, such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as they respectively may require.

(3) Where any report is made under the last foregoing subsection to the Director of Public Prosecutions or Lord Advocate, he may, if he thinks fit, refer the matter to the Board of Trade for further inquiry, and the Board shall, thereupon investigate the matter and may if they think it expedient, apply to the court for an order conferring on the Board or any person disignated by the Board for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

(4) If on any report to the Director of Public Prosecutions under subsection (2) of this section it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions or the Lord Advocate under subsection (2) of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.

(6) If, where any matter is reported or referred to the Director of Public Prosecutions or Lord Advocate under this section, he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression "agent" in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If any person fails or neglects to give assistance in manner required by subsection (6) of this section, the court may, on the application of the Director of Public Prosecutions or Lord Advocate, as the case may be, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

(8) The Board of Trade, with the consent of the Treasury, may direct that the

whole or any part of any costs and expenses properly incurred by the liquidator in proceedings duly brought by him under this section shall be defrayed as expenses incurred by the Board under this Act in relation to the winding up of companies in England and subsection (3) of section thirteen of the Economy (Miscellaneous Provisions) Act, 1926, shall apply accordingly.

Subject to any direction under this subsection and to any mortgages or charges on the assets of the company and any debts to which priority is given by section two hundred and sixty-four of this Act, all such costs and expenses as aforesaid shall be payable out of those assets in priority to all other liabilities payable thereout.

Supplementary Provisions as to Winding up.

Disqualification for appointment as liquidator.

278.—(1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.

(2) Nothing in this section shall disqualify a body corporate from acting as liquidator of a company if acting under an appointment made before the third day of August, nineteen hundred and twenty-eight, but subject as aforesaid any body corporate which acts as liquidator of a company shall be liable to a fine nor exceeding one hundred pounds.

(3) In the application of this section to Scotland the expression "body corporate" does not include a firm.

Enforcement of duty of liquidator to make returns, &c.

279.—(1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the registrar of companies, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

Notification that a company is in liquidation.

280.—(1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company and every receiver or manager who knowingly and wilfully authorises or permits the default, shall be liable to a fine of twenty pounds.

Exemption of certain documents from stamp duty on winding up of companies.

281.—(1) In the case of a winding up by the court of a company registered in England, or of a creditors' voluntary winding up of such a company—

(a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

(b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other Instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In the case of such a winding up as aforesaid of a company registered in Scotland,

(a) every conveyance relating solely to property which forms part of the assets of the company and which, after the execution of the conveyance, is or remains the property of the company for the benefit of its creditors; and

(b) every power of attorney, commission, factory, oath, affidavit, articles of roup or sale, submission, decree arbitral, and every other instrument and writing whatsoever relating solely to the property of the company; and

(c) every deed or writing forming a part of the proceedings in the winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(3) In sub-section (1) of this section the expression "assurance', includes deed, conveyance, assignment and surrender and in subsection (2) of this section the expression "conveyance" includes assignation, instrument, discharge, writing and deed.

Books of company to be evidence.

282. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be primâ facie evidence of the truth of all matters purporting to be therein recorded.

Disposal of books and papers of company.

283.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say:—

(a) In the case of a winding up by, or subject to the supervision of, the court in such way as the court directs;

(b) In the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Board of Trade to prevent, for such period (not exceeding five years from the dissolution of the company) as the Board think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the Board, and to appeal to the court from any direction which may be given by the Board in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Board thereunder, he shall be liable to a fine not exceeding one hundred pounds.

Information as to pending liquidations.

284.—(1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(3) If a liquidator fails to comply with this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues, and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of a contempt of court, and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

Unclaimed assets in England to be paid to

285.—(1) If where a company is being wound up in England, it appears either from any statement sent to the registrar under the last foregoing section or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the said

Companies Liquidation Account. money to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) For the purposes of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exerciseable under section one hundred and fifty-three of the Bankruptcy Act, 1914, for the purposes of ascertaining and getting in the sums, funds, and dividends referred to in that section.

(3) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment thereof, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(4) Any person dissatisfied with the decision of the Board of Trade in respect of a claim made in pursuance of this section may appeal to the High Court.

Unclaimed dividends, &c. in Scotland to be lodged in bank.

286. When a company registered in Scotland has been wound up, and is about to be dissolved, the liquidator shall lodge in a joint stock bank of issue in Scotland (not being a bank in or of which the liquidator is acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts therefor shall be transmitted to the Accountant of Court, and the provisions of the section one hundred and fifty-three of the Bankruptcy (Scotland) Act, 1913, so far as consistent with this Act, shall, with any necessary modifications, apply to sums lodged in a bank in pursuance of this section in like manner as they apply to sums deposited in pursuance of that enactment.

Resolutions passed at adjourned meetings of creditors and contributories.

287. Where after the commencement of this Act a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Supplementary Powers of Court.

Meetings to ascertain wishes of creditors or contributories.

288.—(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Judicial notice of signature of officers.

289. In all proceedings under this Part of this Act, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court or of a county court in England, or of the Court of Session or of a sheriff court in Scotland or of the High Court in northern Ireland, and also of the official seal or stamp of the several offices of the High Court in England or Northern Ireland, or of the Court of Session, appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

Special commission for receiving evidence.

290.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and in Northern Ireland the judges exercising the bankruptcy jurisdiction of the High Court and county court judges and recorders, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in England or Scotland, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court that made the winding up order.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of county courts, judge exercising the said bankruptcy jurisdiction, county court judge, recorder or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

Court may order examination of persons in Scotland.

291.—(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory.

(2) The order or commission to take the examination aforesaid shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(3) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(4) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(5) The sheriff shall be entitled to such fees, and the witness shall be entitled to such allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(6) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

Cost of application for leave to proceed against company being wound up in Scotland.

292.—(1) Where any petition or application fot leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted by the court, the costs of sucd petition or application shall, unless the court otherwise directs, be added to the amount of the claim of the petitioner or applicant against the company.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the commencement of this Act with respect to the costs of an application for leave to proceed with an action or proceeding against a company which is being wound up in England.

Affidavits, &c. in United Kingdom and dominions.

293.—(1) Any affidavit required to be sworn under the provisious or for the purposes of this Part of this Act may be sworn in the United Kingdom, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case

may be, of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

Provisions as to Dissolution.

Power of court to declare dissolution of company void.

294.—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court may allow, to deliver to the registrar of companies for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Registrar may strike defunct company off register.

295.—(1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the registrar shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved:

Provided that—

(a) the liability, if any, of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions

and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Property of dissolved company to be bona vacantia.

296. Where a company is dissolved, all property and rights whatsoeve vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under the two last foregoing sections of this Act, be deemed to be bona vacantia and shall accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.

Special Provisions as to Stannaries.

Attachment of debt due to contributory on winding up in stannaries court.

297. When several companies are in course of liquidation by or under the supervision of the court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applied to such payment in due course:

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

Preferential payments in stannaries cases.

298. In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made:—

(1) In the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall be given to the extent of three months only, instead of four months, and shall not extend to the principal agent, manager, purser or secretary;

(2) All wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months' wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts:

(3) The following debts, that is to say:—

(a) wages of any miner, artizan, or labourer, unpaid at the commencement of the winding up; and

(b) all such amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act, 1925, payable to a miner or the dependants of a miner as are given priority by paragraph (d) of subsection (1) of section two hundred and sixty-four of this Act; and

(c) all such amounts due in respect of contributions payable in respect of a miner under the enactments mentioned in paragraph (e) of the said subsection (1) as are given priority by that paragraph;

shall be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding up by the court) such costs of and incidental to the making of the winding up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary.

(4) Subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the debts to be paid in priority under the last foregoing paragraph, together with interest thereon at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof, and as soon as the said sum has been so advanced, the said debts shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

(5) The provision giving a right of priority to a person who has advanced money for the making of payments on account of wages and salaries shall have effect subject to the modifications contained in this section.

Provisions as to mine club funds.

299.—(1) On the winding up of a company within the stannaries, contributions of the miners, artizans, or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.

(2) Where the winding up is a voluntary winding up, any person claiming to be entitled to any such contributions or fund shall have the same right as the liquidator of applying to the court for directions, or to determine any question arising in the matter.

Central Accounts.

Companies Liquidation Account.

300.—(1) An account, to be called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connexion with the winding up of companies in England shall be paid to that account.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

Investment of surplus funds on general account.

301.—(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid into the Bankruptcy and Companies Winding Up (Fees) Account established under the Economy (Miscellaneous Provisions) Act, 1926.

Separate accounts of particular estates.

302.—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estates, the Board shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum.

Officers.

Officers and remuneration.

303.—(1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of this Act, and may remove any person so appointed.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as they think fit.

Returns by officers in English winding up.

304. The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and officers, at such times and in such manner and form as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

Rules and Fees.

General rules and fees for winding up.

305.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England, and the Court of Session may by Act of Sederunt make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in Scotland.

(2) All rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and, if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the treasury may direct by whom and in what manner the same are to be collected and accounted for:

Provided that in fixing the fees aforesaid regard shall be had to the provisions of section fourteen of the Economy (Miscellaneous Provisions) Act, 1926.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the Chancery Court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the words "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

PART VI.

Receivers and Managers.

306.—(1) A body corporate shall not be qualified for appointment as receiver of the property of a company.

Disqualification for appointment as receiver. (2) Nothing in this section shall disqualify a body corporate from acting as receiver as aforesaid if acting under an appointment made before the third day of August, nineteen hundred and twenty-eight, but subject as aforesaid any body corporate which acts as receiver as aforesaid shall be liable to a fine not exceeding one hundred pounds.

(3) In the application of this section to Scotland the expression "body corporate" dos not include a firm.

307. **Power in England to appoint official receiver as receiver for debenture holders or creditors.** Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

308.—(1) **Notification that receiver or manager appointed.** Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company, and every receiver or manager, who knowingly and wilfully authorises or permits the default shall be liable to a fine of twenty pounds.

309. **Power of court to fix remuneration on application of liquidator.** The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made.

310.—(1) **Delivery to registrar of accounts of receivers and managers.** Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the registrar of companies may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and within one month after he ceases to act as receiver or manager, deliver to the registrar of companies for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five pounds for every day during which the default continues.

311.—(1) If

Enforcement of duty of receiver to make returns, &c.

(a) any receiver of the property of a company, who has made default in filing, deliverting or making any return, account or other document or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or

(b) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him;

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (a) of the last preceding subsection an application for the purposes of this section may be made by any member or creditor of the company or by the registrar of companies, and the order may provide that all costs of and incidental to the application shall be borne by the receiver, and in the case of any such default as is mentioned in paragraph (b) of that subsection the application shall be made by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of such default as is mentioned in paragraph (a) of subsection (1) of this section.

PART VII.

General Provisions as to Registration.

Registration offices in England and Scotland.

312.—(1) For the purposes of the registration of companies under this Act, there shall be offices in England and Scotland at such places as the Board of Trade think fit.

(2) The Board of Trade may appoint such registrars, assistant registrars, clerks, and servants as the Board think necessary for the registration of companies under this Act, and may make regulations with respect to their duties, and may remove any persons so appointed.

(3) The salaries of the persons appointed under this section shall be fixed by the Board of Trade with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.

(4) The Board of Trade may require that the office of the registrar of the court exercising in respect of the winding up of companies the stannaries jurisdiction shall be one of the offices for the registration of companies within that jurisdiction.

(5) The Board may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(6) Whenever any Act is by this Act directed to be done to or by the registrar of companies, it shall, until the Board of Trade otherwise directs, be done to or by the existing registrar of companies in England or Scotland, as the case may be, or in his absence to or by such person as the Board may for the time being authorise:

Provided that in the event of the Board altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Board may appoint.

Fees.

313.—(1) There shall be paid to the registrar in respect of the several matters mentioned in the Table set out in the Tenth Schedule to this Act the several fees therein specified.

(2) All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

Inspection, production and evidence of documents kept by registrar.

314.—(1) Any person may inspect the documents kept by the registrar of companies on payment of such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection, and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy or extract, of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation and not exceeding six pence for each folio of a certified copy or extract:

Provided that, where a company has been dissolved under this Act, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any documents in his custody relating to that company may be removed to the Public Record Office, and documents in respect of which any such direction is given shall be disposed of in accordance with the provisions of the Public Record Office Acts, 1838 to 1898, and the rules made thereunder.

(2) No process for compelling the production of any document kept by the registrar shall issue from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

(3) A copy of or extract from any document kept and registered at any of the offices for the registration of companies in England or Scotland, certified to be a true copy under the hand of the registrar (whose official position it shall not be necessary to prove) shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(4) In the application of this section to Scotland, as in its application to England, a folio shall be deemed to consist of seventy-two words.

Enforcement of duty of company to make returns to registrar.

315.—(1) If a company having made default in complying with any provision of this Act which requires it to file with, deliver or send to the registrar of companies any return, account of other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company, requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the registrar of companies, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

PART VIII.

Application of Act to Companies formed or Registered under former Acts.

Application of Act to companies formed under former Companies Acts.

316. In the application of this Act to existing companies, it shall apply in the same manner—

(1) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares ;

(2) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee ; and

(3) in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company :

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, as the case may be.

Application of Act to companies registered under former Companies Acts.

317. This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, in the same manner as it is in Part IX. of this Act declared to apply to companies registered but not formed under this Act :

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Act, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, as the case may be.

Application of Act to companies registered under former Companies Acts.

318. This Act shall apply to every unlimited company registered as a limited company in pursuance of the Companies Act, 1879, or section fifty-seven of the Companies (Consolidation) Act, 1908, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company :

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the said Act or said section, as the case may be.

Provision as to companies registered under the Joint Stock Companies Acts.

319.—(1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

(2) The power of altering articles under section ten of this Act shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Exclusion of companies registered in Irish Free State or Northern Ireland.

320. Nothing in this Part of this Act shall apply to companies registered in the Irish Free State or Northern Ireland.

PART IX.

Companies not formed under this Act authorised to Register under this Act.

Companies capable of being registered.

321.—(1) With the exception and subject to the provisions contained in this section,—

(a) any company consisting of seven or more members, which was in existence on the second day of November eighteen hundred and sixty-two, including any company registered under the Joint Stock Companies Acts; and

(b) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted according to law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up:

Provided that—

(i) A company registered in any part of the United Kingdom under the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, shall not register in pursuance of this section:

(ii) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section:

(iii) A company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee:

(iv) A company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares:

(v) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose:

(vi) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting:

(vii) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

Definition of joint stock company.

322. For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Requirements for registration by joint stock companies.

323. Before the registration in pursuance of this Part of this Act of a joint stock company there shall be delivered to the registrar the following documents:—

(1) A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where shares are numbered, each share by its number;

(2) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) If the company is intended to be registered as a limited company, a statement specifying the following particulars:—

(a) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(b) The number of shares taken and the amount paid on each share;

(c) The name of the company, with the addition of the word "limited" as the last word thereof; and

(d) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Requirements for registration by other than joint stock companies.

324. Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the registrar—

(1) A list showing the names, addresses, and occupations of the director or other managers (if any) of the company; and

(2) A copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) In the case of a company intended to the registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Authentication of statements of existing companies.

325. The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

326. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

Exemption of certain companies from payment of fees.

327. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

Addition of "limited" to name.

328. When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form and be registered as part of its name.

Certificate of registration of existing companies.

329. On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under the Tenth Schedule to this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be so incorporated, and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

Vesting of property on registration.

330. All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving for existing liabilities.

331. Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation of existing actions.

332. All actions and other legal proceeding which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place:

Provided that execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding, but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

Effect of registration under Act.

333.—(1) When a company is registered in pursuance of this Part of this Act, the following provisions of this section shall have effect.

(2) All provisions contained in any Act of Parliament or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:—

(a) Table A shall not apply unless adopted by special resolution ;

(b) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered ;

(c) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company ;

(d) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company ;

(e) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the object of the company ;

(f) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ;

(g) In the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid, and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustee of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply ;

(4) The provisions of this Act with respect to—

(a) the registration of an unlimited company as limited ;

(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of Parliament or other instrument constituting or regulating the company, he vested in the company.

(7) In this section the expression "instrument" includes deed of settlement, contract of copartnery, cost-book regulations and letters patent.

Power to substitute memorandum and articles for deed of settlement.

334.—(1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications :—

(a) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles; and

(b) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

335. **Power of court to stay or restrain proceedings.** The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

336. **Actions stayed on winding-up order.** Where an order has been made for winding up a company registered in pursuance of this Part of this Act no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

PART X.

Winding up of Unregistered Companies.

337. **Meaning of unregistered company.** For the purposes of this Part of this Act the expression "unregistered company" shall include any trustee savings bank certified under the Trustee Savings Banks Act, 1863, and any partnership, whether limited or not, any association and any company with the following exceptions:—

(1) a railway company incorporated by Act of Parliament, except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them;

(2) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts or under the Companies Act, 1862, or under the Companies (Consolidation) Act, 1908, or under this Act;

(3) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company;

(4) a limited partnership registered in England or Northern Ireland.

338.—(1) **Winding up of unregistered companies.** Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

(a) If an unregistered company has a principal place of business situate in Northern Ireland it shall not be wound up under this Part of this Act unless it has a principal place of business situate in England or Scotland or in both England and Scotland:

(b) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in England or Scotland, according as its principal place of business is situate in England or Scotland, or if it has a principal place of business situate in both countries, to be registered in both countries and the principal place of business situate in that part of Great Britain in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company:

(c) No unregistered company shall be wound up under this Act voluntarily or subject to supervision:

(d) The circumstances in which an unregistered company may be wound up are as follows :—

(i) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;

(ii) If the company is unable to pay its debts ;

(iii) If the court is of opinion that it is just and equitable that the company should be wound up :

(e) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts :—

(i) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor ;

(ii) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same ;

(iii) If in England or Northern Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied ;

(iv) If in Scotland the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made ;

(v) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts :

(f) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court or the Court of Session, according as the railway was authorised to be made in England or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867 :

Provided that, subject to any order made under section fifty-seven of the Supreme Court of Judicature (Consolidation) Act, 1925, and without prejudice to the power to make orders of transfer under that Act, the jurisdiction of the High Court under this provision shall be exercised by the Chancery Division of that Court and provision may be made by general rules for regulating the exercise of the said jurisdiction :

(g) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Bank Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company :

(h) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications, if any, as may be provided by rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

(2) Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under this Part of this Act, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

(3) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

Contributories in winding up of unregistered company.

339.—(1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment or any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid :

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding up order.

(2) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

Power of court to stay or restrain proceedings.

340. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding up order.

341. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

Provisions of Part X. cumulative.

342. The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in the winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

PART XI.

Companies Incorporated outside Great Britain carrying on business within Great Britain.

343. This part of this Act shall apply to all companies incorporated outside Great Britain which, after the commencement of this Act, establish a place of

Companies to which Part XI. applies.

business within Great Britain, and to all companies incorporated outside Great Britain which have, before the commencement of this Act, established a place of business within Great Britain and continue to have an established place of business within Great Britain at the commencement of this Act.

Documents, &c., to be delivered to registrar by companies carrying on business in Great Britain.

344.—(1) Companies incorporated outside Great Britain which, after the commencement of this Act, establish a place of business within Great Britain, shall within one month from the establishment of the place of business, deliver to the registrar of companies for registration—

(a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;

(b) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company;

(c) the names and addresses of some one or more persons resident in Great Britain authorised to accept on behalf of the company service of process and any notices required to be served on the company.

(2) The following companies, namely:—

(a) companies incorporated outside Great Britain which, before the first day of April, nineteen hundred and nine, established a place of business and at the commencement of this Act continue to have a place of business within Great Britain;

(b) companies incorporated in Northern Ireland before the first day of January, nineteen hundred and twenty-two, which at the commencement of this Act have a place of business within Great Britain;

(c) companies incorporated in the Irish Free State which, before the twenty-seventh day of March, nineteen hundred and twenty-three, established a place of business and at the commencement of this Act continue to have a place of business within Great Britain;

shall, within one month from the commencement of this Act, deliver to the registrar for registration the documents and particulars specified in the last foregoing subsection.

(3) Companies to which this Part of this Act applies, other than the companies mentioned in subsections (1) and (2) of this section, shall, if at the commencement of this Act they have not delivered to the registrar the documents and particulars specified in paragraphs (a), (b) and (c) of subsection (1) of section two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917, continue subject to the obligation to deliver those documents and particulars in accordance with the said Acts.

Power of companies incorporated in British possessions to hold lands.

345.—A company incorporated in a British possession which has delivered to the registrar of companies—

(1) in the case of a company to which subsection (1) or subsection (2) of the last foregoing section applies, the documents and particulars specified in paragraphs (a), (b) and (c) of subsection (1) of that section;

(2) in the case of any other company to which this Part of this Act applies, the documents and particulars specified in paragraphs (a), (b) and (c) of subsection (1) of section two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917;

shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act:

Provided that nothing in this section shall affect the power of a company to hold lands by virtue of registration in Northern Ireland.

Return to be delivered to regis-

346. If in the case of any company to which this Part of this Act applies any alteration is made in—

(1) the charter, statutes, or memorandum and articles of the company or any such instrument as aforesaid; or

trar where documents, &c. altered.

(2) the directors of the company or the particulars contained in the list of the directors; or

(3) the names or addresses of the persons authorised to accept service on behalf of the company;

the company shall, within the prescribed time, deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

Balance sheet of company carrying on business in Great Britain.

347.—(1) Every company to which this Part of this Act applies shall in every calendar year make out a balance sheet in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver a copy of that balance sheet to the registrar for registration.

(2) If any such balance sheet is not written in the English language there shall be annexed to it a certified translation thereof.

Obligation to state name of company, whether limited, and country where incorporated.

348. Every company to which this Part of this Act applies shall—

(1) in every prospectus inviting subscriptions for its shares or debentures in Great Britain state the country in which the company is incorporated; and

(2) conspicuously exhibit on every place where it carries on business in Great Britain the name of the company and the country in which the company is incorporated; and

(3) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company; and

(4) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company in Great Britain, and to be affixed on every place where it carries on its business.

Service on company to which Part XI. applies.

349. Any process or notice required to be served on a company to which this Part of this Act applies shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under this Part of this Act and left at or sent by post to the address which has so delivered:

Provided that—

(1) where any such company makes default in delivering to the registrar the name and address of a person resident in Great Britain who is authorised to accept on behalf of the company service of process or notice; or

(2) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served;

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Great Britain.

Office where documents to be filed.

350.—(1) Any document, which any company to which this Part of this Act applies is required to deliver to the registrar of companies, shall be delivered to the registrar at the registration office in England or Scotland according as the company has established a place of business in England or Scotland, and if it has established or establishes a place of business both in England and in Scotland, the document shall be delivered at the registration office both in England and in Scotland, and references to the registrar of companies in this Part of this Act shall be construed accordingly:

Provided that nothing in this Part of this Act shall operate to require any document to be delivered at any registration office if it has been delivered at that office before the commencement of this Act.

(2) If any company to which this Part of this Act applies ceases to have a place of business in either part of Great Britain, it shall forthwith give notice of the fact to the registrar of companies for that part, and as from the date on which notice is so given the obligation of the company to deliver any document to the registrar shall cease.

Penalties.

351. If any company to which this Part of this Act applies fails to comply with any of the foregoing provisions of this Part of this Act the company, and every officer or agent of the company, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

Interpretation of Part XI.

352. For the purposes of this Part of this Act :—

The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation ;

The expression "director" in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act ;

The expression "place of business" includes a share transfer or share registration office ;

The expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act.

Special Provisions as to Companies incorporated in Channel Islands or Isle of Man.

Obligation of company incorporated in Channel Islands or Isle of Man to deliver documents to registrar.

353. Where a company incorporated in the Channel Islands or the Isle of Man—

(1) after the commencement of this Act establishes a place of business in England or Scotland ; or

(2) has before the commencement of this Act established and at the commencement of this Act continues to have a place of business in England or Scotland ;

all the provisions of this Act requiring documents to be forwarded or delivered to, or filed with, the registrar of companies (other than provisions requiring the payment of a fee in respect of the registration of a company) shall apply to the company in like manner as if it were a company registered in England or Scotland, as the case may be, and if the company establishes places of business both in England and in Scotland the said provisions shall so apply as if the company were registered both in England and in Scotland :

Provided that, in the case of a company which has established a place of business before the commencement of this Act, the time within which documents must be forwarded or delivered to, or filed with, the registrar shall run from the commencement of this Act.

PART XII.

Restrictions on Sale of Shares and Offers of Shares for Sale.

Provisions with respect to prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale.

354.—(1) It shall not be lawful for any person—

(a) to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, unless—

(i) before the issue, circulation or distribution of the prospectus in Great Britain a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the registrar of companies ;

(ii) the prospectus states on the face of it that the copy has been so delivered ;

(iii) the prospectus is dated ;

(iv) the prospectus otherwise complies with this Part of the Act ; or

(b) to issue to any person in Great Britain a from of application for shares in or debentures of such a company or intended company as aforesaid unless the form is issued with a prospectus which complies with this Part of this Act :

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Great Britain are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section thirty-eight of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section thirty-seven of this Act shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus or for the issue of a form of application for shares or debentures in contravention of the provisions of this section shall be liable to a fine not exceeding five hundred pounds.

(7) In this and the next following section the expressions "prospectus," "shares," and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

Requirements as to prospectus.

355.—(1) In order to comply with this part of this Act a prospectus in addition to complying with the provisions of sub-paragraphs (ii) and (iii) of paragraph (a) of subsection (1) of the last foregoing section must—

(a) contain particulars with respect to the following matters—

- (i) the objects of the company;
- (ii) the instrument constituting or defining the constitution of the company;
- (iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
- (iv) an address in Great Britain where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;
- (v) the date on which and the country in which the company was incorporated;
- (vi) whether the company has established a place of business in Great Britain and, if so, the address of its principal office in Great Britain:

Provided that the provisions of sub-paragraphs (i), (ii), (iii) and (iv) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

(b) subject to the provisions of this section, state the matters specified in Part I. of the Fourth Schedule to this Act (other than those specified in paragraph 1 of the said Part I.) and set out the reports specified in Part II. of that Schedule subject always to the provisions contained in Part III. of the said Schedule:

Provided that—

(i) where any prospectus is published as a newspaper advertisement, it shall be sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed; and

(ii) in paragraph 3 of Part I. of the said Fourth Schedule a reference to the constitution of the company shall be substituted for the reference to the articles ; and

(iii) Paragraph 1 of Part III. of that Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(a) as regards any matter not disclosed, he proves that he was not cognisant thereof ; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part ; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused :

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of Part I. of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

Restrictions on offering of shares for subscription or sale.

356.—(1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public.

In this subsection the expression "house" shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside Great Britain, either by such a statement as aforesaid, or by such a prospectus as complies with this Part of this Act :

Provided that the provisions of this subsection shall not apply—

(a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognised stock exchange in Great Britain and the officer so states and specifies the stock exchange ; or

(b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public ; or

(c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The said statement shall contain particulars with respect to the following matters—

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Great Britain where the principal can be served with process ;

(b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Great Britain ;

(c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;

(d) the dividends, if any, paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement of that effect ;

(e) the total amount of any debentures issued by the company, and outstanding at the date of the statement, together with the rate of interest payable thereon ;

(f) the names and addresses of the directors of the company ;

(g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up ;

(h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognised stock exchange in Great Britain or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted ;

(i) where the offer relates to units, particulars of the name and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Great Britain where that document or a copy thereof can be inspected.

In this subsection the expression "company" means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, or incites, causes or procures any person to act, in contravention of this section, he shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds or to both such imprisonment and fine, and in the case of a second or subsequent offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

(6) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) In this section, unless the context otherwise requires, the expression "shares" means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units, and the expression "unit" means any right or interest (by whatever name called) in a share, and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(8) Where any person is convicted in England of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

Where the court makes an order under this subsection (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the High Court.

PART XIII.

Miscellaneous.

Prohibition of Partnerships with more than Twenty Members.

357. No company association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than

Prohibition of partnerships with more than twenty members. the business of banking) that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament or of letters patent, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the court exercising the stannaries jurisdiction.

Provisions relating to Banks.

358. **Prohibition of banking partnerships with more than ten members.** No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent.

359.—**On registration of banking company with limited liability, notice to be given to customers.** (1) Where a banking company which was in existence on the seventh day of August, eighteen hundred and sixty-two, purposes to register as a limited company, it shall, at least thirty days before so registering give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

360.—**Liability of bank of issue unlimited in respect of notes.** (1) A bank of issue registered under this Act as a limited company shall not be entitled to limited liability in respect of its notes, and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited:

Provided that, if, in the event o the company being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets.

(2) For the purposes of this section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder.

(3) Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

361.—**Privileges of banks making annual return.** (1) Where a company carrying on the business of bankers has duly forwarded to the registrar of companies the annual return required by section one hundred and eight of this Act and has added thereto a statement of the names of the several places where it carries on business, the company—

(a) shall not be required to furnish to the Commissioners of Inland Revenue any returns under the provisions of the Country Bankers Act, 1826, the Bankers (Scotland) Act, 1826, section twenty-one of the Bank Charter Act, 1844, or section thirteen of the Bank Notes (Scotland) Act, 1845; and

(b) shall be deemed to be a "bank" and "bankers" within the meaning of the Bankers' Books Evidence Act, 1879.

(2) The fact of the said annual return having been duly forwarded may be proved in any legal proceedings by the certificate of the registrar.

Miscellaneous Offences.

362. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act

Penalty for false statement. specified in the Eleventh Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable on conviction in Scotland on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and be liable on summary conviction in England or Scotland to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid :

Provided that—

(a) the fine imposed on summary conviction shall not exceed one hundred pounds ;

(b) nothing in this section shall affect the provisions of the Perjury Act, 1911.

Penalty on perjury in Scotland.

363. If in Scotland any person, on examination on oath authorised under this Act or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.

Penalty for improper use of word "Limited."

364. If any person or persons trade or carry on business under any name or title of which "Limited," or any contraction or imitation of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used.

General Provisions as to Offences.

Provision with respect to default fines and meaning of "officer in default."

365.—(1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding five pounds.

(2) For the purpose of any enactment in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

Prosecution of offences punishable by fine.

366. All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts.

Application of fines.

367. The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

Saving as to private prosecutors.

368. Nothing in this Act relating to the institution of criminal proceedings by the Director of Public Prosecutions shall be taken to preclude any person from instituting or carrying on any such proceedings.

Saving for privileged communications.

369. Where proceedings are instituted under this Act against any person by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, nothing in this Act shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.

Service of Documents and Legal Proceedings.

Service of documents on company.

370.—(1) A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

(2) Where a company registered in Scotland carries on business in England the process of any court in England may be served on the company by leaving it at or sending it by post to the principal place of business of the company in England, addressed to the manager or other head officer in England of the company.

(3) Where process is served on a company under subsection (2) of this section, the person issuing out the process shall send a copy thereof by post to the registered office of the company.

Costs in actions by ceratin limited companies.

371. Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of court to grant relief in certain cases.

372.—(1) If in any proceeding for negligence, default, breach of duty, or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) of this section applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4) The persons to whom this section applies are the following :—

(a) directors of a company :
(b) managers of a company :
(c) officers of a company :
(d) persons employed by a company as auditors, whether they are or are not officers of the company.

Power to enforce orders.

373. Orders made by the High Court under this Act may be enforced in the same manner as orders made in an action pending therein.

Rules of procedure in Scotland.

374.—(1) The Court of Session may, by Act of Sederunt, make rules regulating the procedure in proceedings under this Act in the Court of Session or in a sheriff court, including appeals from the sheriff court.

(2) The power to make rules under this section includes power to make rules with respect to costs and fees.

Jurisdiction of stannaries court.

375.—(1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof as the Court of the Vice-Warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act.

(2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands other than the Irish Free State, on such terms and conditions as the court may think fit:

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.

(3) All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

General Provisions as to Board of Trade.

Annual report by Board of Trade.

376. The Board of Trade shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament.

Authentication of documents issued by Board of Trade.

377. Any approval, sanction, or licence, or revocation of licence, which under this Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board, or of any person authorised in that behalf by the President of the Board.

Orders and certificates of Board to be evidence.

378.—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof, unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

Power to alter tables and forms.

379. (1) The Board of Trade may alter Table A, the form in the Seventh Schedule and the table of fees in the Tenth Schedule to this Act, so that it does not increase the amount of fees payable to the registrar under the said Tenth Schedule, and may alter or add to Tables B, C, D and E in the First Schedule, and the forms in the Second and Sixth Schedules of this Act.

(2) Any such table or form, when altered, shall be published in the London Gazette, and thenceforth, shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Board of Trade in Table A shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that Table.

Interpretation.

Interpretation.

380.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):—

"Annual return" means the return required to be made, in the case of a company having a share capital, under section one hundred and eight, and, in the case of a company not having a share capital, under section one hundred and nine, of this Act;

"Articles" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained, (as the case may be) in Table B in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A in the First Schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of the last-mentioned Act, or in Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or in that Table as altered in pursuance of section one hundred and eighteen of the last-mentioned Act, or in Table A in the First Schedule to this Act ;

"Book and paper" and "book or paper" include accounts, deeds, writings, and documents ;

"Company" means a company formed and registered under this Act or an existing company ;

"Existing company" means a company formed and registered under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, but does not include a company registered under the said enactments in Northern Ireland or the Irish Free State ;

"Company within the stannaries" means a company engaged in or formed for working mines within the stannaries ;

"The court" used in relation to a company means the court having jurisdiction to wind up the company ;

"The court exercising the stannaries jurisdiction" used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested ;

"Debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not ;

"Director" includes any person occupying the position of director by whatever name called ;

"Document" includes summons, notice, order, and other legal process, and registers ;

"The Gazette" means, as respects companies registered in England, the London Gazette and as respects companies registered in Scotland, the Edinburgh Gazette ;

"General rules" means, general rules made under section three hundred and five of this Act, and includes forms ;

"Joint Stock Companies Acts" means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require ; but does not include the Act passed in the eighth year of the reign of Her majesty Queen Victoria, chapter one hundred and ten, intituled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies ;

"Memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment ;

"Prescribed" means as respects the provisions of this Act relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by the Board of Trade ;

"Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company ;

"Real and personal," as respects Scotland, means heritable and moveable ;

"The registrar of companies," or, when used in relation to registration of companies, "the registrar," means the registrar or other officer performing under this Act the duty of registration of companies in England or Scotland, or in the stannaries, as the case requires ;

"Share" means share in the share capital of a company and includes stock except where a distinction between stock and shares is expressed or implied;

"Table A" means Table A in the First Schedule to this Act.

(2) A person shall not be deemed to be within the meaning of any provision in this Act a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

Repeal, Savings, Extent, Short Title and Commencement.

Repeal.

381.—(1) The enactments mentioned in the First Part of the Tewlfth Schedule to this Act are hereby repealed to the extent specified in third column of that Part.

(2) Without prejudice to the provisions of section thirty eight of the Interpretation Act, 1889—

(a) nothing in this repeal shall affect any Order in Council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former enactment relating to companies, but any such Order in Council, order rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Act shall have effect as if made, passed, given, taken issued or done under this Act:

Provided that any rule made under section two hundred and thirty-eight of the Companies (Consolidation) Act, 1908, shall be deemed to have been made in the case of a rule made with respect to fees in the High Court, under section two hundred and thirteen of the Supreme Court of Judicature (Consolidation) Act, 1925, and with respect to any other matter in the High Court under section ninety-nine of that Act, and, in the case of a rule made with respect to proceedings in the court exercising the stannaries jurisdiction, under section one hundred and sixty-four of the County Courts Act, 1888;

(b) any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Act;

(c) any person appointed to any office under or by virtue of any former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Act;

(d) any register kept under any former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Act;

(e) all funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.

(3) In this section the expression "former enactment relating to companies" means any enactment repealed by this Act and any enactment repealed by the Companies (Consolidation) Act, 1908.

Savings.

382. Nothing in this Act shall affect—

(1) The incorporation of any company registered under any enactment hereby repealed;

(2) Table B in the schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act;

(3) Table A in the First Schedule annexed to the Companies Act, 1862, or any part thereof, either as originally contained in that schedule or as altered in pursuance of section seventy-one of that Act, so far as the same applies to any company existing at the commencement of this Act;

(4) Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or any part thereof, either as originally contained in that Schedule or as altered in pursuance of section one hundred and eighteen of that Act, so far as the same applies to any company existing at the commencement of this Act;

(5) The enactments set out in the second Part of the Twelfth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862;

(6) The power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865;

(7) The provisions of section five of the Trade Union Act, 1871:

Provided that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to his Act.

383. **Saving of pending proceedings for winding up.** The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding up, the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

384.—(1) **Application to Ireland.** Nothing in this Act, except the provisions thereof which relate expressly to companies registered or incorporated in Northern Ireland or outside Great Britain, shall apply to or in relation to companies registered or incorporated in Northern Ireland.

(2) Nothing in this Act, except where it is expressly provided to the contrary, shall affect the law in force in Northern Ireland at the commencement of this Act.

385.—(1) **Short title and commencement.** This Act may be cited as the Companies Act, 1929.

(2) This Act shall come into operation on the first day on which by virtue of Orders made by His Majesty in Council under subsection (4) of section one hundred and eighteen of the Companies Act, 1928, all the provisions of that Act will be in operation.

SCHEDULES.

FIRST SCHEDULE.

TABLE A.

Sections 8, 115, 333, 379, 380.

Regulations for Management of a Company Limited by Shares.

Preliminary.

*[1] 1. In these regulations:—

"The Act" means the Companies Act, 1929.

When any provision of the Act is referred to, the reference is to that provision as modified by any statute for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Shares.

[3] 2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is, liable to be redeemed.

[4] 3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holder of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

[6] 4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

[7] 5. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the directors think fit.

[8] 6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 45 (1) of the Act.

Lien.

[9] 7. The company shall have a lien on every share (not being a fully-paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall

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* The corresponding regulations in Table A of the Act of 1908 are shown in brackets.

also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

[10] 8. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

9. For giving effect to any such sale the directors may authorise some person to transfer the share sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor thall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

[11] 10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable, as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

Call on Shares.

[12] 11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

[13] 12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

[14] 13. If a sum called in a respect of a share is not paid before or on the day appointed for payment thereof the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per centum per annum from the day-appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

[15] 14. The provision of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

[16] 15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

[17] 16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per sent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares.

[18] 17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed

to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

[19] 18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve :

> I, A. B., of——, in consideration of the sum of £——paid to me by C. D. of——(herein-after called "the said transferee") do hereby transfer to the said transferee the share [*or shares*] numbered——in the undertaking called the——Company, Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same ; and I, the said transferee, do hereby agree to take the said share [*or shares*] subject to the conditions aforesaid. As witness our hands the——day of——.
>
> Witness to the signatures of, &c.

[20] 19. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceeding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(a) a fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

[21] 20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

[22] 21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall. upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share, or, instead of being registered himself, to make such transfer of the share, as the deceased or bankrupt person could have made ; but the director shall, in either case, have the same right to decline or suspend registration as they would have hade in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

[23] 22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares.

[24] 23. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

[25] 24. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

[26] 25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

[27] 26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

[28] 27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

[29] 28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

[30] 29. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock.

[31] 30. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

[32] 31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

[33] 32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

[34] 33. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Alteration of Capital.

[41] 34. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

[42] 35. Subject to any direction to the contrary that may be given by the company in general meeting all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are

entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed, to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

[43] 36. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

[44] 37. The company may by ordinary resolution—

(a) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(b) Sub-divide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 50 (1) (d) of the Act;

(c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

38. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

[46] 39. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

[47] 40. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

[48] 41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 114 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings.

[49] 42. Subject to the provisions of section 117 (2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

[49] 43. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings.

[50] 44. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

[51] 45. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

[52] 46. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

[53] 47. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

[54] 48. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

[55] 49. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

[56] 50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of the hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than 15 per cent. of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

[57] 51. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

[58] 52. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

[59] 53. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of members.

[60] 54. On a show of hands every member present in person shall have

one vote. On a poll every member shall have one vote for each share of which he is the holder.

[61] 55. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

[62] 56. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee or *curator bonis* appointed by that Court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

[63] 57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

[64] 58. On a poll votes may be given either personally or by proxy.

[65] 59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

[66] 60. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

[67] 61. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve :—

——Company, Limited.

'I,——, of——, in the county of——, being a member of the——Company, Limited, hereby appoint——, of——, as my proxy, to vote for me and on my behalf at the [*ordinary or extraordinary, as the case may be*] general meeting of the company to be held on the ——day of——, and at any adjournment thereof."

Signed this——day of——.

62. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings.

63. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors.

[68] 64. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

[69] 65. The remuneration of the directors shall from time to time be determined by the company in general meeting.

[70] 66. The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors.

[71] 67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the

company, and may exercise all such powers of the company, as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

[72] 68. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

[73] 69. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

[75] 70. The directors shall cause minutes to be made in books provided for the purpose—

(a) Of all appointments of officers made by the directors;

(b) Of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) Of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

[76] 71. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors.

[77] 72. The office of director shall be vacated, if the director—

(a) ceases to be a director by virtue of section 141 of the Act; or

(b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or

(c) becomes bankrupt; or

(d) becomes prohibited from being a director by reason of any order made under section 217 or 275 of the Act; or

(e) is found lunatic or becomes of unsound mind; or

(f) resigns his office by notice in writing to the company; or

(g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company.

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by section 149 of the Act, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors.

[78] 73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

[79] 74. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

[80] 75. A retiring director shall be eligible for re-election.

[81]&[82] 76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

[83] 77. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

[84] 78. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

[85] 79. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

[86] 80. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

[87] 81. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

[88] 82. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three be three, and when the number of directors does not exceed three, be two.

[89] 83. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

[90] 84. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

[91] 85. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

[92] 86. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

[93] 87. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equaility of votes the chairman shall have a second or casting vote.

[94] 88. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

[95] 89. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

[96] 90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

[97] 91. No dividend shall be paid otherwise then out of profits.

[98] 92. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

[99] 93. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

[100] 94. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

[101] 95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders as the case may be may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders as the case may be may direct.

[102] 96. No dividend shall bear interest against the company.

Accounts.

[103] 97. The directors shall cause proper books of account to be kept with respect to—

All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

All sales and purchases of goods by the company; and

The assets and liabilities of the company.

[104] 98. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

[105] 99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

[106] 100. The directors shall from time to time in accordance with section 123 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

[108] 101. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the Auditors' report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit.

[109] 102. Auditors shall be appointed and their duties regulated in accordance with sections 132, 133 and 134 of the Act.

Notices.

[110] 103. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

[111] 104. If a member has no registered address within United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notice to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

[112] 105. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

[113] 106. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending if through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

[114] 107. Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notice to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

TABLE B.

Form of Memorandum of Association of a Company Limited by Shares.

Sections 11 and 379.

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Numbers of shares taken by each Subscriber.
"1. Jhon Jones, of——, in the county of——, merchant...	200
"2. John Smith, of——, in the county of—— "	25
"3. Thomas Green, of——, in the county of—— "	30
"4. John Thompson, of——, in the county of—— "	40
"5. Caleb White, of——, in the county of—— "	15
"6. Andrew Brown, of——, in the county of—— "	5
"7. Caesar White, of——, in the county of—— "	10
Total shares taken...............	325"

Dated the——day of——19—.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, London.

TABLE C.

Sections 11 and 379.

Form of Memorandum and Articles of Association of a Company limited by Guarantee, and not having a Share Capital.

Memorandum of Association.

1st. The name of the Company is "The Kent School Association, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are the carrying on a school for boys in the county of Kent and the doing all such other things as are incidental or conducive to the attainment of the above object.

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges, and expenses of winding up, and the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones, of——, in the county of——, schoolmaster.
"2. John Smith, of——, in the county of——, "
"3. Thomas Green, of——, in the county of——, "
"4. John Thompson, of——, in the county of——, "
"5. Caleb White, of——, in the county of——, "
"6. Andrew Brown, of——, in the county of——, "
"7. Caesar White, of——, in the county of——, "

Dated the——day of——19—.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, London.

Articles of Association to accompany preceding Memorandum of Association.

Preliminary.

1. In these regulations :—

The Act means the Companies Act, 1929.

When any provision of the Act is referred to the reference is to such provision as modified by any statute for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Members.

2. The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

7. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 114 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings.

8. Subject to the provisions of section 117 (2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of

some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceeding at any meeting.

Proceedings at General Meetings.

10. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

11. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

12. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

13. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

14. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose one of their number to be chairman.

15. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

16. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person or by proxy entitled to vote and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

17. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

18. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

19. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

20. Every member shall have one vote.

21. A member of unsound mind, or in respect of whom an order has been made, any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the seal, or under the hand of an officer or attorney so authorised. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

26. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve:—

——Company, Limited.

"I——, of——, in the county of——, being a member of the——Company, Limited, hereby appoint——, of——, as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, *as the case may be*] general meeting of the company, to be held on the——day of——, and at any adjournment thereof."

Signed this——day of——.

27. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings.

28. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors.

29. The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum.

30. The remuneration of the directors shall from time to time be determined by the company in general meeting.

Powers and Duties of Directors.

31. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

32. The directors shall cause minutes to be made in books provided for the purpose—

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all sesolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

33. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors.

34. The office of director shall be vacated, if the director—

(a) without the consent of the company in general meeting holds any other office of profit under the company ; or

(b) becomes bankrupt ; or

(c) becomes prohibited from being a director by reason of any order made under sections 217 or 275 of the Act ;

(d) is found lunatic or becomes of unsound mind ; or

(e) resigns his office by notice in writing to the company ;

(f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 149 of the Act.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors.

35. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office,

36. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

37. A retiring director shall be eligible for re-election.

38. The company at the general meeting at which a director retire in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

39. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

40. Any casual vacancy occurring in the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

41. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at the meeting as an additional director.

42. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

43. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meeting, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

44. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceed three, be three and shall, when the number of directors does not exceed three, be two.

45. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

46. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

47. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

48. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members may choose one of their number to be chairman of the meeting.

49. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

50. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Accounts.

51. The directors shall cause proper books of account to be kept with respect to—

All sums of money received and expended by the company and the matter in respect of which the receipt and expenditure takes place;

All sales and purchases of goods by the company; and

The assets and liabilities of the company.

52. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

53. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

54. The directors shall from time to time in accordance with section 123 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts balance sheets and reports as are referred to in that section.

55. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit.

56. Auditors shall be appointed and their duties regulated in accordance with sections 132, 133, and 134 of the Act.

Notices.

57. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of 24 hours after the letter containing the same was posted.

58. If a member has no registered address within the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of

notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

59. Notice of every general meeting shall be given in some manner hereinbefore authorised to every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them. No other persons shall be entitled to receive notices of general meetings.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones, of——, in the county of——, schoolmaster.
"2. John Smith, of——, in the county of——, ,,
"3. Thomas Green, of——, in the county of——, ,,
"4. John Thompson, of——, in the county of——, ,,
"5. Caleb White, of——, in the county of——, ,,
"6. Andrew Brown, of——, in the county of——, ,,
"7. Caesar White, of——, in the county of——, ,,

Dated the—day of—, 19—.
Witness to the above signatures,
A. B., No. 20, Bond Street, London.

Sections 11 and 379.

TABLE D.

Memorandum and Articles of Association of a Company Limited by Guarantee, and having a Share Capital.

Memorandum of Association.

1st. The name of the company is "The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges, and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respeetively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
"1. John Jones, of——, in the county of——, merchant ...	200
"2. John Smith, of——, in the county of——, ,,	25
"3. Thomas Green, of——, in the county of——, ,,	30
"4. John Thompson, of——, in the county of——, ,,	40
"5. Caleb White, of——, in the county of——, ,,	15
"6. Andrew Brown, of——, in the county of——, ,,	5
"7. Caesar White of——, in the county of——, ,,	10
Total shares taken...........	325"

Dated the—day of—, 19—.
Witness to the above signatures,
A. B., No. 13, Hute Street, Clerkenwell, London.

Articles of Association to accompany preceding Memorandum of Association.

1. The Articles of Table A set out in the First Schedule to the Companies Act, 1929, shall be the articles of association of the company and apply to the company.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones, of——, in the county of——, merchant.
"2. John Smith, of——, in the county of——, „
"3. Thomas Green, of——, in the county of——, „
"4. John Thompson, of——, in the county of——, „
"5. Caleb White, of——, in the county of——, „
"6. Andrew Brown, of——, in the county of——, „
"7. Caesar White, of——, in the county of——, „

Dated the——day of——, 19——."

Witness to the above Signatures,
A. B., No. 13, Hute Street, Clerkenwell, London.

TABLE E.

Sections 11 and 379.

Memorandum and Articles of Association of an unlimited Company having a Share Capital.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith of London, is the sole patentee, and the doing of all such things as are incidental or conductive to the attainment of the above objects."

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of shares taken by each Subscriber.
"1. John Jones, of——, in the county of——, merchant ...	3
"2. John Smith, of——, in the county of——, „ ...	2
"3. Thomas Green, of——, in the county of——, „ ...	1
"4. John Thompson, of——, in the county of——, „ ...	2
"5. Caleb White, of——, in the county of——, „ ...	2
"6. Andrew Brown, of——, in the county of——, „ ...	1
"7. Abel Brown, of——, in the county of——, „ ...	1
Total shares taken..................	12"

Dated the——day of, 19—.
Witness to the above signatures,
A. B., No. 20, Bond Street, London.

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

2. The company may by special resolution—
   (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe ;
   (b) consolidate its shares into shares of a larger amount than its existing shares ;
   (c) sub-divide its shares into shares of a smaller amount than its existing shares ;

(d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person ;

(e) reduce its share capital in any way.

3. The Articles of Table A set out in the First Schedule to the Companies Act, 1929 (other than Articles 30, 31, 32, 33, 34, 37, and 38) shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones, of——, in the county of——, merchant.
2. John Smith, of——, in the county of——, "
3. Thomas Green, of——, in the county of——, "
4. John Thompson, of——in the county of——, "
5. Caleb White, of——, in the county of——, "
6. Andrew Brown, of——, in the county of——, "
7. Abel Brown, of——, in the county of——, "

Dated the——day of——, 19—.

Witness to the above signatures,
A. B., No, 20, Bond Street, London.

Sections 14 and 379.

SECOND SCHEDULE.

Form of Licence to Hold Lands.

The Board of Trade hereby licence the to hold the lands hereunder described *(insert description of lands)* [or to hold the lands not exceeding in the whole acres].

The conditions of this licence are *(insert conditions, if any).*

THIRD SCHEDULE.

Section 27.

Form of statement in lieu of Prospectus to be delivered to Registrar by a Private Company on becoming a Public Company.

THE COMPANIES ACT, 1929.

Statement in lieu of Prospectus delivered for registration by [*insert the name of the Company*] pursuant to section 27 of the Companies Act, 1929.

Delivered for registration by

The nominal share capital of the Company,	£——.
Divided into	Shares of £——each.
	" " "
	" " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of £——each.
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors.	
Amount of shares issued..	Shares.
Amount of commisssios paid in connection therewith.	
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.	
Unless more than one year has elapsed since the date on which the Company was entitled to commence business :—	
Amount of preliminary expenses	
Amount paid to any promoter	£——.
	Name of Promoter.
Consideration for the payment	Amount £——.
If the share capital of the company is divided into different classes of shares, the right of voting at	Consideration :—

meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures *issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1.——share of £——fully paid. 2.——shares upon which £—— per share credited as paid.
Consideration for the issue of those shares or debentures.	3.——debenture £—— 4. Consideration:—
Names and addresses of Vendors of Property (1) purchased or acquired by the Company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the Company.	
Amount (in cash, shares or debentures) paid or payable to each separate vendor.	
Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.	Total purchase price £—— Cash............£—— Shares ....£—— Debentures—£—— Goodwill.........£——
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the Company.	
Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be purchased or acquired by the Company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the Company by him or by the firm.	
Rates of the dividends (if any) paid by the Company in respect of each class of shares in the Company in each of the three financial years immediately preceding the date of this statement or since the incorporation of the Company whichever period is the shorter.	
Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.	
If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business	

which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substitued for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing.)

——.

——.

——.

Date ,

Note.—In this Form the expression "vendor" includes a vendor as defined in Part III. of the Fourth Schedule to this Act, and the expression "financial year" has the meaning assigned to it in that Part of the said Schedule.

FOURTH SCHEDULE.

PART 1.

Sections 35 and 355.

Matters required to be Stated in Prospectus.

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.

2. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

3. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

4. The names, descriptions, and addresses of the directors or proposed directors.

5. Where shares are offered to the public for subscription particulars as to—

(i) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters :—

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue ;

(b) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company ;

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters ;

(d) working capital ; and

(ii) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to paid for

wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

9. The amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount, if any, payable for goodwill.

10. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment.

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

14. The names and addresses of the auditors, if any, of the company.

15. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II.

Reports to be set out in Prospectus.

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said three years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus.

PART III.

Provisions applying to Parts I. and II. of Schedule.

1. The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount of estimated amount of the preliminary

expenses, shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) the purchase money is not fully paid at the date of the issue of the prospectus ;
(b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus ;
(c) the contract depends for its validity or fulfilment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

4. For the purposes of paragraph 8 part I. of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part II. of this Schedule shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years.

6. The expression "financial year" in Part II. of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part of this Schedule be deemed to be a financial year.

Section 40.

FIFTH SCHEDULE.

Form of Statement lieu of Prospectus to be delivered to Registrar by a company which does not issue a Prospectus or which does not go to Allotment on a Prospectus issued.

THE COMPANIES ACT, 1929.

Statement in lieu of Prospectus delivered for registration by [*insert the name of the company*] pursuant to section 40 of the Companies Act, 1929.

Delivered for registration by

The nominal share capital of the company.	£——,
Divided into...	Shares of £——£ each. " " " " " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of £——each.
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors.	
If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1.——Shares of £——fully paid. 2.——Shares upon which £—— per share credited as paid.
The consideration for the intended issue of those shares and debentures.	3.——debenture £——. 4. Consideration :—

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the Company.	
Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £—— Cash..................£—— Shares................£—— Debentures.........£—— Goodwill............£——
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company;	Amount paid. " payable.
or	
Rate of the commission..................................	Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses...........	£——.
Amount paid or intended to be paid to any promotor.	Name of promoter. Amount £——.
Consideration for the payment..........................	Consideration :—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the Company or entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the Company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the Company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the Company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substitured for references	

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to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorized in writing.) ——.

——.

Date ——.

Note.—In this Schedule the expression "vendor" includes a vendor as defined in Part III. of the Fourth Schedule to this Act, and the expression "financial year" has the meaning assigned to it in that Part of the said Schedule.

Sections 108 and 379.

SIXTH SCHEDULE.

Form of Annnal Return of a Company having a Share Capital.

Annual Return of the——Company, Limited made up to the——day of——19—(being the fourteenth day after the date of the first or only ordinary general meeting in 19—).

The address of the registered office of the company is as follows :—

Summary of Share Capital and Shares.

Nominal Share Capital £——divided into* { ——shares of £——each.
——shares of £——each. }

Total number of shares taken up* to the——day of——19—being the date of the return (which number must agree with the total shown in the list as held by existing members)——.

Number of shares issued subject to payment wholly in cash——.

Number of shares issued as fully paid up otherwise than in cash——.

Number of shares issued as partly paid up to the extent of——per share otherwise than in cash——.

†Number of——shares (if any) issued at a discount——.

Total amount of discount of the issue of shares which has not been written off at the date of this return £——.

‡There has been called up on each of——shares £——.

‡There has been called up on each of——shares £——.

‡There has been called up on each of——shares £——.

§Total amount of calls received, including payments on application and allotment £——.

Total amount (if any) agreed to be considered as paid on——shares which have been issued as fully paid up otherwise than in cash £——.

Total amount (if any) agreed to be considered as paid on——shares which have been issued as partly paid up to the extent of—per share otherwise than in cash £——.

Total amount of calls unpaid £——.

Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last Return £.——.

Total number of shares forfeited——.

Total amount paid (if any) on shares forfeited £——.

Total amount of shares for which share warrants to bearer are outstanding £——.

Total amount of share warrants to bearer issued and surrendered respectively since the date of the last Return, issued £——, surrendered £——.

Number of shares comprised in each share warrant to bearer——.

Total amount of the indebtedness of the Company in respect of all mortgages and charges of the kind which are required (or, in the case of a company registered in Scotland, which, if the Company had been registered in England, would be required) to be registered with the Registrar of Companies under the Companies Act, 1929. £——.

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* Where there are shares of different kinds or amounts (*e. g.*, Preference and Ordinary, or 1*l.* and 1*s.*) state the number and nominal values separately.

† If the shares are of different kinds, state them separately.

‡ Where various amounts have been called or there are shares of different kinds state them separately.

§ Include what has been received on forfeited as well as on existing shares.

Copy of last audited Balance Sheet of the Company.

Note.—Except where the Company is (1) a "Private Company" within the meaning of Section 26 of the Companies Act, 1929, or is (2) an Assurance Company which has complied with the provisions of Section 7 (4) of the Assurance Companies Act, 1909, this Return must include a written copy, certified by a Director or by the Manager or Secretary of the Company to be a true copy, of the last balance sheet which has been audited by the Company's auditors (including every document required by law to be annexed thereto) together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

Private Company.

Certificate to be given by a Private Company.

A. "I certify that the Company has not since the date of the *last Annual Return issued any invitation to the public to subscribe for any shares or debentures of the Company."

(Signature)——.
(State whether Director or Secretary.)

B. Should the number of members of the Company exceed fifty the following certificate is also required :—

"I certify that the excess of members of the Company above fifty consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the employment of the Company were while in such employment, and have continued after the determination of such employment to be, members of the Company."

(Signature)——.
(State whether Director or Secretary.)

Note.—Banking companies must add a list of all their places of business.

The Return must be signed at the end by a Director or by the Manager or Secretary of the Company.

Delivered for filing by——.

Particulars of the †Directors of the——Company, Limited, at the date of the Annual Return.

‡The present Christian Name or Names and Surname.	Any former Christian Name or Names or Surname	Nationality.	Nationality of origin (if other than the present nationality).	Usual residential address.	§ Other business occupation if any. If none state so.

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* In the case of the first Annual Return strike out the words "last Annual Return" and substitute therefor the words "Incorporation of the Company."

† "Director" includes any person who occupies the position of a Director by whatever name called, and any person in accordance with whose directions or instructions the directors of a Company are accustomed to act.

‡ In the case of a Corporation its corporate name and registered or principal office should be shown.

§ In the case of an individual who has no business occupation, but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships must be entered.

List of Persons holding Shares in the—— Company, Limited, on the——day of——, 19—, and of Persons who have held Shares therein at any time since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, showing their Names and Addresses, and an Account of the Shares so held.

N.B.—If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

Folio in Register Ledger containing particulars.	Names, Addresses and Occupations.				Account of Shares.					Remarks.
	Surname.	Christian name.	Address.	Occupation.	(1) Number of Shares held by existing Members at date of Return.(2)	(3) Particulars of Shares Transferred since the date of the last Return or (in the case of the first Return) of the incorporation of the Company, by persons who are still Members.		(3) Particulars of Shares Transferred since the date of the last Return or (in the case of the first Return) of the incorporation of the Company, by persons who have ceased to be Members.		
						Number.(2)	Date of Regietration of Transfer.	Number.(2)	Date of Registration of Transfer.	

(Signature.)
(State whether Director or Manager or Secretary.)

(1) The aggregate Number of Shares held, and not the Distinctive Numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the Summary to have been taken up.

(2) When the Shares are of different classes these columns may be sub-divided so that the number of each class held or transferred may be shown separately. Where any Shares have been converted into Stock, the amount of Stock held by each member must be shown.

(3) The date of Registration of each Transfer should be given as well as the Number of Shares transferred on each date. The Particulars should be placed opposite the name of the Transferor, and not opposite that of the Transferee, but the name of the Transferee may be inserted in the "Remarks" column immediately opposite the particulars of each Transfer.

131.

SEVENTH SCHEDULE.

Form of Statement to be published by Banking and Insurance Companies, and Deposit, Provident, or Benefit Societies.

*The share capital of the company is——, divided into——shares of——each.

The number of shares issued is——.

Calls to the amount of——pounds per share have been made, under which the sum of—pounds has been received.

The liabilities of the company on the first day of January (or July) were—

Debts owing to sundry persons by the company.

On judgment, £——.
On specialty, £——.
On notes or bills, £——.

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*If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

On simple contracts, £——.
On estimated liabilities, £——.

The assets of the company on that day were——

Government securities [*stating them*].

Bills of exchange and promissory notes, £——.

Cash at the bankers, £——.

Other securities, £——.

Section 224.

EIGHTH SCHEDULE.

PART I.

Orders Pronounced in Vacation in Scotland which are to be Final.

Orders :—

As to time for proving claims.

As to the attendance of, and production of documents by, persons indebted to, or having property of, or information as to the affairs or property of, a company.

As to meeting for ascertaining wishes of creditors or contributories.

As to summoning meetings of creditors or contributories where a compromise is proposed.

As to the examination of witnesses in regard to the property or affairs of a company.

PART II.

Orders Pronounced in Vacation in Scotland which are to take effect until Reclaiming Note disposed of.

Orders :—

Restraining or permiting commencement or continuance of legal proceedings.

Appointing an official liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the court) a liquidator for a winding up voluntarily or under supervision.

Sanctioning the exercise of any power by an official liquidator other than the powers specified in paragraphs (d), (e) and (f) of subsection (1) and the power to appoint a law agent.

Requiring the delivery of property or documents to the official liquidator.

As to the arrest and detention of an absconding contributory and his property.

Limiting the powers of provisional official liquidators.

For continuance of winding up under supervision.

Section 260.

NINTH SCHEDULE.

Provisions which do not apply in the case of a Winding Up subject to Supervision of the Court.

Statement of Companies affairs to be submitted to Official Receiver.	s. 181.
Report by Official Receiver.	s. 182.
Power of Court to appoint Liquidator.	s. 183.
Appointment and powers of provisional Liquidator.	s. 184.
Appointment, style, &c., of Liquidators in English winding up.	s. 185.
Provisions where person other than Official Receiver is appointed Liquidator.	s. 186.
Provisions as to Liquidators in Scottish winding up.	s. 187.
General provisions as to Liquidators.	s. 188. except sub-s. (5).
Exercise and control of Liquidators' powers in England.	s. 192.
Books to be kept by Liquidator in English winding up.	s. 193.
Payments of Liquidator in English winding up into bank.	s. 194.
Audit of Liquidators' accounts in English winding up.	s. 195.

Control of Board of Trade over Liquidators in England.	s. 196.
Release of Liquidators in England.	s. 197.
Meeting of creditors and contributories to determine whether committee of inspection shall be appointed.	s. 198.
Constitution and proceedings of committee of inspection.	s. 199.
Powers of Board of Trade where no committee of inspection in England.	s. 200.
Additional powers of committee of inspection in Scotland.	s. 201.
Appointment in England of special manager.	s. 209.
Power in England to order public examination of promoters, directors, &c.	s. 216.
Power in England to restrain fraudulent persons from managing companies.	s. 217.
Delegation to Liquidator of certain powers of Court in England.	s. 220.
Power in England to appoint Official Receiver as receiver for debenture holders or creditors.	s. 307.

Sections 313, 329, 379.

TENTH SCHEDULE.

Table of Fees to be paid to the Registrar of Companies.

I.—*By a Company having a Share Capital.*

	£.	*s.*	*d.*
For registration of a company whose nominal share capital does not exceed 2,000*l*.	2	0	0
For registration of a company whose nominal share capital exceeds 2,000*l*., the following fees, regulated according to the amount of nominal share capital (that is to say) ;			
For every 1,000*l*, of nominal share capital or part of 1,000*l*., up to 5,000*l*.	1	0	0
For every 1,000*l*, of nominal share capital, or part of 1,000*l*., after the first 5,000*l*., up to 100,000*l*.	0	5	0
For every 1,000*l*, of nominal share capital, or part of, 1,000*l*., after the first 100,000*l*.	0	1	0
For registration of any increase of share capital made after the first registration of the company, the same fees per 1,000*l*., or part of a 1,000*l*, as would have been payable if the increased share capital had formed part of the original share capital at the time of registration :			
Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than 50*l*., taken into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document by this Act required or authorised to be registered or required to be delivered sent or forwarded to the registrar other than the memorandum or the abstract required to be delivered to the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding-up in England	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the registrar	0	5	0

II.—*By a Company not having a Share Capital.*

	£.	*s.*	*d.*
For registration of a company whose number of members as stated in the articles does not exceed 25	2	0	0
For registration of a company whose number of members as stated in the articles exceeds 25, but does not exceed 100, the above fee of 2*l*. with an additional 1*l*. for every additional 25 members or less after the first 25.			

	£.	s.	d.
For registration of a company whose number of members, as stated in the articles, exceeds 100, but is not stated to be unlimited, a fee of 5l. with an additional 5s. for every additional 50 members, or less after the first 100.			
For registration of a company in which the number of members is stated in the articles to be unlimited..	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of that increase.........................	0	5	0
Provided that no company shall be liable to pay on the whole a greater fee than 20l. in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document by this Act required or authorised to be registered or required to be delivered sent or forwarded to the registrar, other than the memorandum or the abstract required to be delivered to the registrar by the receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding up in England..	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the registrar..	0	5	0

III.—*By a Company to which Part XI. of this Act applies.*

For registering any document required to be delivered to the registrar under Part XI. of this Act, except documents required to be delivered under section three hundred and fifty-three of this Act.	0	5	0

Section 362.

ELEVENTH SCHEDULE.

Provisions referred to in Section 362 of the Act.

Provisions relating to—

Conclusiveness of certificate of incorporation ;	s. 15.
Specific requirements as to particulars in prospectus ;	s. 35.
Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar ;	s. 40.
Return as to allotments ;	s. 42.
Registration of charges created by company registered in England ;	s. 79.
Duty of company to register charges created by the company ;	s. 80. (1).
Duty of company to register charges existing on property acquired ;	s. 81.
Application of Part III. to companies incorporated outside England ;	s. 90.
Restrictions on commencement of business ;	s. 94.
The particulars as to directors and indebtedness of the company ;	s. 108 (3)(n)(o).
Statutory meeting and statutory report ;	s. 113.
Auditors' report and right to information and explanations ;	s. 134 (1) (2).
Restrictions on appointment or advertisement of director ;	s. 140.
Notice by liquidator of his appointment ;	s. 250.
Delivery to registrar of accounts of receivers and managers ;	s. 310.
Documents, &c., to be delivered to registrar by companies carrying on business in Great Britain ;	s. 344.
Return to be delivered to registrar where documents, &c., altered ;	s. 346.
Balance sheet of company carrying on business in Great Britain ;	s. 347.
Obligation to state name of company, &c. ;	s. 348.
Annual report by Board of Trade.	s. 376.

Section 381.

TWELFTH SCHEDULE.

PART I.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
45 & 46 Vict. c. 72.	The Revenue Friendly Societies and National Debt Act, 1882.	Section eleven, and in the First Schedule the words "7 Geo. IV. "c 46, 7 Geo. IV. c. 67, 7 & 8 "Vict. 3, 32, s. 21, 8 & 9 Vict. c. 38, s. 13."
8 Edw. 7, c. 69.	The Companies (Consolidation) Act, 1908.	The whole Act.
3 & 4 Geo. 5, c. 16.	The Foreign Jurisdiction Act, 1913.	In the Schedule, the words from "8 Edw. 7" to the end.
3 & 4 Geo. 5, c. 25.	The Companies Act, 1913.	The whole Act.
7 & 8 Geo. 5, c. 28.	The Companies (Particulars as to Directors) Act, 1917.	The whole Act.
10 & 11 Geo. 5, c. 30.	The Unemployment Insurance Act, 1920.	Subsections (1), (2) and (3) of section twenty-six.
14 & 15 Geo. 5, c. 38.	The National Health Insurance Act, 1924.	Section one hundred and six.
15 & 16 Geo. 5, c. 84.	The Workmen's Compensation Act, 1925.	In subsection (3) of section seven, paragraphs (ii) and (iii), the words "the following date, that is to say :— "(a) In the first case," and paragraphs (b) and (c) ; subsection (4) ; in subsection (5) the words "or the company" ; subsection (6).
17 & 18 Geo. 5, c. 30.	The Unemployment Insurance Act, 1927.	The Fourth Schedule, so far as it amends subsection (1) of section twenty-six of the Unemployment Insurance Act, 1920.
18 & 19 Geo. 5, c. 14.	The National Health Insurance Act, 1928.	Paragraph (a) of section nineteen.
18 & 19 Geo. 5, c. 45.	The Companies Act, 1928.	The whole Act.

Section 382.

PART II.

Enactments saved.

An Act to regulate Joint Stock Banks in England (7 & 8 Vict. c. 113), s. 47.

Existing companies to have the powers of suing and being sued.

Every company of more than six persons established on the sixth day of May, one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session of the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, intituled "An Act to regulate Joint Stock Banks in England," shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of the Country Bankers Act, 1826, provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Inland Revenue the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

The Joint Stock Banking Companies Act, 1857.

Part of s. 12.

Power to form banking partnerships of ten persons.

Notwithstanding anything contained in any Act passed in the Session holden in the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England", or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of the Joint Stock Banking Companies Act, 1857, have carried on such business.

SEY TRADING CORPORATION LTD.
Srinagar-Kashmir.

APPENDIX H.

Offences under the Indian Companies Act, 1913-1941.

Section.	Offence.	Offender.	Maximum penalty.
4(5)	To be a member of a company &c. formed in contravention of s. 4.	Member.	Rs. 1,000.
25(2)	Default in sending to a member at his request copies of memorandum and articles.	Company.	Rs. 10 for each offence.
25A(2)	Issuing memorandum or articles which are not in accordance with any alteration made therein.	Company and officers.	Rs. 10 for each copy issued.
31(2)	Default in keeping register of members and entering therein the required particulars.	Do.	Rs. 50 a day during default.
31A(3)	Default in keeping index of names of members.	Do.	Rs. 50.
32(5)	Default in making and filing with the registrar annual return of list of members and summary with certificate.	Do.	Rs. 50 a day during default.
34(5)	Default in sending to transferee & transferor notice of refusal to transfer shares or debentures.	Company, director, manager, secretary and officers.	Do.
36(3)	Refusing inspection of register and index of members and default in sending copy of register.	Company and officers.	Rs. 20 and Rs. 20 a day during default.
41(3)	Default in filing with registrar situation of office where British register is kept and change in the situation or discontuance.	Company.	Rs. 50 a day during default.
47(2)	Omission to strike out name of member and to make requisite entries in register of members on the issue of a share-warrant.	Company and officers.	Do.
51(2)	Default in filing notice with registrar of consolidation, and division of share capital or conversion and reconversion into stock.	Do.	Do.
53(3)	Default in filing with registrar notice of increase of share capital or members.	Do.	Do.
54A(3)	Purchasing, or giving loan &c. for purchasing, by the company of its own shares or shares of public company of which it is subsidiary company.	Do.	Rs. 1,000.
62(2)	Default in embodying the minute of reduction in copy of memorandum issued after its registration.	Do.	Rs. 10 for each copy.

Section.	Offence.	Offender.	Maximum penalty.
64	Concealment of names of creditors, misrepresentation regarding debts and abetment thereof in connection with reduction of capital.	Officers.	Imprisonment for one year or fine or both.
66A(5)	Default in forwarding to registrar a copy of order passed by Court under s. 66 A.	Company and officers.	Rs. 50.
70(3)	Default in adding statement as to unlimited liability of a director in proposal for his election or in giving such notice.	Director, proposer, promoter & officer.	Rs. 1,000.
72(4)	Carrying on business by company without having registered office and without sending to registrar notice of situation and change in registered office.	Company.	Rs. 50 a day during default.
74(1)	Omission to paint or affix company's name on outside of office.	Company & officer.	Rs. 50 a day during default.
74(2)	Using seal without company's name legibly engaven and issuing bill-head &c., and bills of exchange &c., without having company's name mentioned therein.	Officer & other persons.	Rs. 500.
75(2)	Default in publishing subscribed and paid up capital in notices &c., where authorised capital is advertised.	Company & officer.	Rs. 1,000.
76(2)	Default in holding general meeting within time specified in sub-s. (1) of s. 76.	Company, dircetor and manager.	Rs. 500.
77(10)	Default in holding statutory meeting and forwarding statutory report to members and to registrar.	Directors.	Do.
82(4) & (6)	Default in filing special or extraordinary resolution wirh registrar.	Company & officer.	Rs. 20 a day during default.
82(5) & (6)	Default in embodying in or annexing to a copy of articles a copy of special resolution or forwarding the same in print to a member when required.	Do.	Rs. 10 for each copy.
83(6)	Refusing inspection of minute book of general meetings or failure to furnish copy of minutes to a member.	Do.	Rs. 25 & Rs. 25 a day during default.
84(2)	Inserting name of a person, who has not consented to be director, in a list filed with registrar along with application for registration of memorandum and articles.	Applicant.	Rs. 500.
85(2)	Acting as director by unqualified person after 2 months or shorter period fixed by the articles.	Unqualified director.	Rs. 50 a day.

Section.	Offence.	Offender.	Maximum penalty.
86A(1)	Acting as director, managing agent or manager by undischarged insolvent.	Undischarged insolvent.	Imprisonment for 2 years, or Rs. 1,000 or both.
86D(2)	Making or guaranteeing any loan to a director or to a firm of which he is a partner or to a private company of which he is a director.	Directors.	Rs. 500.
87(4)	Refusing inspection of register of directors, managers and managing agents or default in keeping the said register or default in sending to registrar return and notification mentioned in sub-s. (2) of s. 87.	Company & officer.	Rs. 50 (neither more nor less.)
87D(3)	Making or guaranteeing loan to managing agent or to a partner of his firm or to a member or director of his private company.	Directors.	Rs. 500.
87E(2)	Making or guaranteeing loan to companies under the management of the same managing agent.	Director & officer.	Rs. 1,000.
91A(2)	Failure to make disclosure of interest of director at meeting of directors.	Director.	Do.
91A(4)	Failure to keep register containing particulars of contracts &c., in which a director is interested and default in giving inspection thereof to member.	Officer.	Rs. 500.
91B(2)	Voting by interested director at meeting or forming a quorum therein.	Director.	Rs. 1,000.
91C(2)	Default in sending to members abstract of terms of contract or variation thereof relating to appointment of manager or managing agent in which a director is interested and failure to give inspection to members of the contract.	Company & officer.	Do.
91D(3)(b)	Default by manager or agent of company in making memo. of terms of contract &c. in which the company is undisclosed principal & in sending to company and directors the memo.	Manager or agent.	Rs. 200.
92(5)	Issuing prospectus without filing a copy with registrar.	Company & persons issuing.	Rs. 50 a day during default.
96(2)	Issuing form of application for shares or debentures unless the form is issued with prospectus complying with s. 93.	Person so issuing.	Rs. 500.
97(1)	Issuing prospectus which does not comply with s. 93.	Person responsible for issuing it.	Rs. 50 a day during default.
101(2C)	Failure to keep in deposit application moneys in a scheduled bank until return, or obtaining certificate to commence business.	Promoter, director or person responsible.	Rs. 500.

Section.	Offence.	Offender.	Maximum penalty.
103 (5)	Commencing business or excercising borrowing powers in contravention of s. 103.	Person responsible.	Rs. 500 a day during contravention.
104 (3)	Default in filing with registrar return of allotment of shares and in producing before him contract relating to title of allottee of fully or partly paid up shares.	Officer.	Rs. 500 a day during default.
105A (3)	Default in inserting particulars of discount in prospectus and balance sheet.	Company & officer.	Rs. 50.
105B(2)	Failure to include in balance sheet particulars relating to redeemable preference shares.	Company & officer.	Rs. 1,000.
108(2)	Default in having ready within 3 months certificates of shares, debentures and debenture stock alloted or transferred.	Company & officer.	Rs. 50 a day during default.
109A(2)	Default in delivering to registrar prescribed particulars of charge & copy of instrument thereof relating to properties acquired by the company.	Do.	Rs. 500 (neither more nor less.)
118(2)	Default in filing with registrar notice of appointment of a receiver.	Person obtaining appointment of or appointing receiver.	Rs. 50 a day during default.
119(3)	Default in filing with registrar by receiver abstract of receipts and payments and notice of ceasing to act as receiver and default in inserting statement in document issued, the fact that a receiver has been appointed.	Company, director, manager, managing agent, secretary, receiver and officer.	Rs. 200.
122(1)	Default in filing with registrar particulars of (a) any mortgage or charge, (b) payment or satisfaction of a debt in respect thereof and (c) issue of debentures of a series.	Company, officers & other persons.	Rs. 500 a day during default.
122(2)	Default in complying with requirements of the Act as to registration of mortgages and charges.	Company & officer.	Rs. 1,000.
122(3)	Authorising delivery of debentures &c. without a copy of certificate of registration endorsed upon them.	Person authorising.	Do.
123(2)	Omission to make the required entries in register of mortgages.	Director, manager or officer.	Rs. 500.
124(2)	Refusing inspection of copies of instruments creating mortgage or charge or of register of mortgages.	Company & officer.	Rs. 50 & Rs. 20 a day during refusal.
125(3)	Refusing inspection of register of holders of debentures or copy thereof or copy of debenture trust-deed.	Do.	Do.

Section.	Offence.	Offender.	Maximum penalty.
130(4)	Default in keeping proper books of account, in keeping them at the registered office and in allowing inspection by directors.	Managing agent, partner or director of firm or company of managing agent and directors.	Rs. 1,000.
131A(3)	Default in attaching to balance sheet directors' report.	Directors.	Do.
133(3)	Default in laying before company or in issuing balance sheet &c., as required by s. 131 or if a balance sheet is issued, circulated or published which does not comply with ss. 131, 132, 132A and 133.	Company and officers.	Rs. 500.
134(4)	Default in filing with registrar a copy of balance sheet at the same time as the annual list of members and summary under s. 32.	Company and officers.	Rs. 50 a day during default.
136(4)	Default by banking or insurance company and deposit, provident or benefit society in displaying a copy of statement in Form G, Sch. III together with copy of last audited balance sheet laid before members.	Company & officer.	Rs. 50 a day during default.
137(3)	Refusing or neglecting to furnish information and explanation to registrar.	Officers & former officers.	Rs. 50 for each offence.
140(3)	Refusing to produce books or documents or to answer questions to inspector.	Do.	Do.
142(3)	Do.	Do.	Do.
145(5)	Making auditors' report which does not comply with requirements of s. 145.	Auditor.	Rs. 100.
153(4)	Default in annexing certified copy of order of Court to every copy of memorandum &c., issued.	Company & officers.	Rs. 10 for each copy.
153A(3)	Default in delivering certified copy of order made under s. 153A to registrar.	Do.	Rs. 50.
154(2)	Default by private company in filing prospectus &c. with registrar on alteration of its articles.	Do.	Rs. 500.
177A(5)	Default in submitting to official liquidator statement under s. 177A.	Director, secretary, manager, chief officer & persons mentioned s. 177 A (2).	Rs. 100 a day during default.
177A(7)	Stating untruthfully to be creditor or contributory for inspecting statement under s. 177A.	Persons so stating.	As under s. 182 I.P.C.
194(3)	Default in reporting to registrar the order of Court for dissolution of company.	Official liquidator.	Rs. 50 a day during default.

Section.	Offence.	Offender.	Maximum penalty.
206(2)	Default in giving notice of resolution for voluntary winding up in Gazette & newspaper.	Company & officer.	Do.
208D(2)	Default in summoning general meeting and in laying before it account and statement mentioned in s. 208D.	Liquidator.	Rs. 100.
208E(3)	Default in sending to registrar a copy of account and return mentioned in s. 208E.	Do.	Rs. 50 a day during default.
208E(5)	Failure to deliver to registrar certified copy of order of Court deferring date of dissolution.	Applicant to Court.	Do.
209A(6)	Default in summoning & advertising notice of meeting of creditors and in complying with sub-ss. (3) & (4) of s. 209A.	Company, directors & officers.	Rs. 1,000.
209G(2)	Failing to summon meetings of company & creditors at the end of each year and laying before the same accounts of dealings &c.	Liquidator.	Rs. 100.
209H(3)	Default in sending to registrar copy of account and return of holding of meeting.	Do.	Rs. 50 a day during default.
209H(5)	Failure to deliver to registrar certified copy of order of Court deferring date of dissolution.	Applicant to Court.	Do.
214(2)	Failure by liquidator to deliver to registrar notice of his appointment in prescribed form.	Liquidator.	Do.
236	Destroying, mutilating, falsifying or secreting company's books &c. or making false entry therein.	Director, manager, officer & contributory.	Imprisonment for 7 years and fine.
238	Intentionally giving false evidence.	Person giving false evidence.	Do.
238A(1)	Committing several offences mentioned in clauses (a) to (p) of sub-s. (1) of s. 238A.	Past or present director, managing agent, manager & officer.	Imprisonment for 5 years in cases of offences mentioned in clauses (m), (n) & (o). Imprisonment for 2 years in any other case.
238A(2)	Taking in pawn or pledge or otherwise receiving property in circumstances where pawning &c. are offences under cl.(o) of sub-s. (1) of s. 238A.	Person taking in pawn &c.	Imprisonment for 3 years.
243(2)	Failing to file with registrar Court's order declaring dissolution of company to have been void.	Person obtaining the order.	Rs. 50 a day during default.

Section.	Offence.	Offender.	Maximum penalty.
244 (2)	Untruthfully stating himself to be a creditor or contributory.	Person so stating.	As under s. 182, I.P.C.
244 (3)	Failing to file statement mentioned in s. 244 as to pending liquidation.	Liquidator.	Rs. 500 a day during default.
277 (6)	Failing to comply with requirements of s. 277.	Company, officer or agent.	Rs. 500 & Rs. 50 a day during default.
277 A (5)	Issuing, circulating or distributing prospectus or form of application for shares & debentures in contravention of s. 277A.	Person responsible for issuing &c.	Rs. 5,000.
277 C (3)	Canvassing from house to house for sale of shares of company incorporated outside India.	Canvasser.	Rs. 100.
277 L (4)	(1) Default in complying with requirements of ss. 277G, 277H, 277J, 277K, 277L or 277M.	Directors & officers.	Rs. 500 a day during default.
	(2) Default in complying with requirements of sub-s. (1) of s. 277L, as to the filing of statement referred to therein.	Do.	Rs. 100 a day during default.
282	Making false statements in returns &c.	Person making them.	Imprisonment for 3 years & fine.
282 A	Wrongfully obtaining possession of or withholding company's property or applying it for different purposes.	Director, managing agent, manager, officer or employee.	Rs. 1,000 & in default of restoration imprisonment for 2 years.
282 B (5)	Misapplying moneys and securities of employees or contributions to provident funds & failing to let employee see bank's receipt.	Directors, managing agents, managers & officers.	Rs. 500.
283	Trading or carrying on business using improperly "Limited" as last word of name.	Person so doing.	Rs. 50 a day.

APPENDIX I.

Documents, &c. required to be Produced before or Filed with the Registrar.

Section.	Documents, &c.
15 (1)	Certified copy of order confirming alteration of memorandum and a printed copy of the memorandum so altered.
15 (2)	Certified copy of order confirming change of registered office.
22	Memorandum and articles for registration of a new company.
24 (2)	Declaration by advocate, attorney, or pleader, or director, manager, or secretary named as such in articles, of compliance with requirements of the Act.
32 (3)	Copy of annual list and summary signed by a director, manager, or secretary with his certificate.
32 (4)	By a private company the above and a certificate required by s. 32 (4).
39	Notice of rectification of the register of members.
41	Notice of situation of the office where the British register is kept and notice of change or discontinuance.
50 (4)	Notice of exercise of powers of sub-division and cancellation of shares.
51	Notice of consolidation or division of share capital & of conversion & reconversion into stock.
53	Notice of increase of share capital or of members.
54	Certified copy of order confirming special resolution to re-organize share capital.
61	Order of Court confirming reduction of share capital and certified copy of the order and minute.
72	Notice of situation of the registered office and of any change therein.
77 (5)	Copy of the statutory report certified by directors & auditors.
82	A printed or type-written copy of a special or extraordinary resolution certified by an officer.
84 (1)	Consent of a director to act as such and contract to take and pay for qualification shares or an affidavit that the qualification shares are registered in his name.
84 (2)	List of persons who have consented to be directors.
87	Return of particulars specified in register of directors &c. and notification of change among directors, managers & managing agents.
92	Copy of prospectus signed by directors, or proposed directors.
98	Statement in lieu of prospectus signed as above.
103	Verified declaration by secretary or director of compliance with conditions mentioned in the section.
104 (1) (a)	Return of allotment
104 (1) (b)	Contract of allotment of shares fully or partly paid up otherwise than in cash and verified copies of such contract and a return.

Section.	Documents, &c.
104 (2)	Prescribed particulars of such a contract not reduced to writing.
105 (1) (b)	Statement disclosing amount or rate per cent. of the commission for subscribing for shares where they are not offered to the public for subscription.
109, 109A & 110	Particulars of mortgage or charge with the instrument thereof or a verified copy of the instrument.
111	Particulars of amount or rate of commission, &c.
116 (1)	Particulars of mortgage or charge and of the issue of debentures of a series.
116 (3)	Particulars of modification of any mortgage or charge.
118	Notice of appointment of receiver.
119	Abstract of receipts and payments during receiver's time and notice that he has ceased to act as receiver.
121	Intimation of payment or satisfaction of a mortgage or charge.
134	Copy of balance-sheet signed by manager or secretary. [A private company is not required to file it.]
153 & 153A	Certified copy of Court's order under ss. 153 & 153A.
154	Prospectus or statement in lieu of prospectus (in form marked II in the Second Schedule), by a private company altering its articles for turning itself into a public company.
172	Copy of a winding up order made by the Court.
182	Audited accounts of official liquidator.
194	Report of the Court's order for dissolution of a company.
208E (3) & 209H (3)	Copy of account of winding up and return of general meeting of company.
208E (5) & 209H (5)	Certified copy of Court's order deferring date of dissolution.
214	Notice of his appointment by a voluntary liquidator.
243	Certified copy of Court's order declaring dissolution to be void.
244	Statement containing particulars respecting position of liquidation.
255	Documents relating to registration of a joint-stock company under Part VIII mentioned in s. 255.
256	Documents relating to registration of other companies under Part VIII mentioned in s. 256.
277	Documents and particulars relating to companies incorporated outside British India mentioned in s. 277.
277A	Copy of prospectus certified by chairman and 2 directors.
277I	Declaration verified by affidavit signed by directors and managers of a banking company.
277L	Statement by banking company as required by s. 277L.

APPENDIX J.

Registers &c. required to be kept at a Company's Office.

Section.	Registers, &c.
31 & 36	Register of members with particulars mentioned in s. 31.
31A & 36	Index of the names of members.
32 (3)	Annual list of members and summary to be contained in a separate part of the register of members.
34	Transfer of shares.
42	Duplicate of the British register of members.
83	Minute Books of general meetings and directors' meetings.
87	Register of directors and managers and managing agents.
91A	Register of particulars of contracts &c. mentioned in s. 91A.
91D	Memorandum of contract by manager or agent where company is undisclosed principal.
117	Copies of instruments creating mortgages or charges.
123	Register of mortgages and charges.
125	Register of debenture-holders.
130	Books of account.
131 (3)	Copy of audited balance-sheet for inspection of members.
136 (2)	Statement in form G of Schedule III together with a copy of the last audited balance-sheet laid before members to be displayed by every banking or insurance company, or a deposit, provident or benefit society.

APPENDIX K.

ADDITIONAL FORMS.

FORM 1.

AGREEMENTS.

Agreement for Sale made with Agent or Trustee for an intended Company before its Incorporation.

An Agreement made the day of between A. B. of and C.D. of (hereinafter called the Vendors) of the one part, and X. of on behalf of the Company mentioned below (which Company is hereinafter referred to as the Company), of the other part.

Whereas the Vendors have been carrying on business as at and elsewhere under the style of & Co.; and Whereas the Company to be called The Limited, is to be formed under the Indian Companies Act, 1913 to 1941, having for its object among other things the acquisition and working of the said business : Now it is hereby agreed as follows :—

1. The Vendors shall sell, and the Company shall purchase—

First, the goodwill of the said business (with the exclusive right to use the name of & Co., as part of the name of the Company, and represent the Company as carrying on such business in continuation of the Vendors' firm, or in succession thereto), and all trade marks connected therewith ;

Secondly, all the immovable properties specified in Schedule hereto ;

Thirdly, all the plant, machinery, office furniture, patents, licenses, live-stock, waggons, carts, lorries, implements and utensils to which the Vendors are entitled in connection with the said business ;

Fourthly, all book-debts and other debts and actionable claims due to the Vendors in connection with the said business, and the full benefit of all securities for such debts ;

Fifthly, the full benefit of all pending contracts and engagements to which the Vendors are or may be entitled in connection with the said business ;

Sixthly, all bills and notes of the Vendors in connection with the said business ;

Seventhly, all other property to which the Vendors are entitled in connection with the said business.

2. The consideration for the said sale shall be the sum of Rs. which shall be paid and satisfied as follows, *viz.* ; As to the sum of Rs. in cash, and as to the sum of Rs. by the allotment to the Vendors or their nominees of fully paid up ordinary/preference shares in the capital of the Company of Rs. each and as to the sum of Rs. by the allotment to the Vendors or their nominees of Rs. debentures of the Company carrying interest at the rate of p. c. per annum as from the day 19 . As to the residue of the consideration for the said sale, the Company shall undertake to pay, satisfy, discharge and fulfil all the debts, liabilities, contracts and engagements of the Vendors in relation to the said business, and shall indemnify them against all proceedings, claims and demands in respect thereof.

3. The said premises are sold free from all incumbrances (except the mortgages specified in the Schedule hereto).

4. The description of the said several properties is believed, and should be correct, but if any error should be found therein, the same, if capable of compensation, shall not annul the sale, but a fair compensation shall be allowed by the Vendors in respect thereof.

5. The Company shall, without investigation, accept such title as the Vendors have to the said premises hereby agreed to be sold.

6. The purchase shall be completed by day of at when possession of the premises shall, as far as practicable, be given to the Company, and the considerations aforesaid so far as they consist of cash and shares and debentures shall be paid and satisfied subject to the provisions of this Agreement, and thereupon the Vendors

and all other necessary parties, if any, shall, at the expenses of the Company, execute and do all assurances and things for vesting the said premises in the Company, and giving to it the full benefit of this Agreement as shall be reasonably required.

7. If from any cause whatever other than the wilful default of the Vendors the purchase shall not be completed by the said day of , the Company shall pay interest on the said sum of Rs. cash at the rate of p. c. per annum.

8. As regards the premises subject to mortgages as specified in Schedule hereto the Vendors shall convey the same to the Company subject to the mortgages, and the Company shall be at liberty to retain out of the cash portion of the said consideration a sum sufficient to pay off and satisfy in full all claims under such mortgages.

9. Save as hereinbefore provided, the Vendors shall pay and discharge all their debts and liabilities in connection with the said business as on the day of , and shall indemnify the Company against all proceedings, claims and demands in respect thereof.

10. The possession of the said premises shall be retained by the Vendors up to the said day of and in the meantime they shall carry on the said business in the same manner as heretofore, so as to maintain the same as a going concern, and they shall from the date of this Agreement be deemed to be carrying on such business on behalf of the Company, and shall account and be entitled to be indemnified accordingly.

11. Each one of the Vendors agrees that he will not at any time after completion of this sale, either solely or jointly with or as manager or agent for, any other person or persons, or Company, directly or indirectly carry on, or be engaged, or concerned, in the business of a or permit or suffer his name to be used or employed in carrying on or in connection with the said business within miles of , save so far as the Vendor shall as an officer or agent of the Company be employed in the business of the Company.

12. All books of account of the said firm, and all books of reference to customers, and all other books and documents of the said firm shall be delivered by the Vendors to the Company on possession being given of the premises pursuant to the provisions of this Agreement, and the Company shall thenceforth be entitled to the custody thereof, and to the use thereof for the purposes of carrying on its business, but the Vendors shall have free access, at all reasonable times, to such of the said books and documents as relate to the outstanding book debts and credits of the Vendors, or may otherwise be requisite for enabling the Vendors to collect and get in the assets of the said firm not hereby agreed to be sold, and to liquidate the affairs thereof; nevertheless when and so soon as any of the said books shall cease to be necessary for the carrying on of the said business, the same shall be delivered over to the Vendors, who shall thereupon be absolutely entitled thereto.

13. Each of the vendors shall retain and hold in his name the whole of the shares allotted to him pursuant to clause 2 hereof for a period of years from the allotment thereof.

14. Upon the adoption of this agreement by the Company in such manner as to render the same binding on the Company, the said X. shall be discharged from all liability in respect thereof.

15. Unless before the day of the Company shall have become entitled to commence business, either of the parties hereto may, by notice in writing to the other, determine this Agreement, and after adopting this Agreement the Company shall stand in the place of said X. for the purpose of this clause.

16. If this Agreement shall not be adopted by the Company in manner aforesaid before, the day of next, either of the parties hereto may, by notice in writing to the other, determine the same.

17. The determination of this Agreement under clause 15 or 16 hereof shall not give rise to any claim for compensation, expenses or otherwise.

[Sometimes a paragraph to the following effect may be found necessary].

18. Unless before the day of at least shares of the nominal value of Rs. in the Company have been applied for by responsible persons, either of the parties hereto may, by notice in writing to the other, annul this agreement which shall become void save as regards this clause hereof.

As witness the hands of the parties hereto the day and the year first above written.

Schedules.

FORM 2.

Agreement by Company adopting Contract made before its Incorporation.

[For Endorsement on Original Contract.]

An Agreement made this day of between A. of of the first part, B, of of the second part and The Limited, (hereinafter called the Company) of the third part. Whereas since the execution of the within-written Agreement, the Company has been incorporated in accordance with the intention in that behalf referred to in such Agreement.

Now it is hereby mutually agreed as follows :—

1. The within-written Agreement is hereby adopted by the Company, and shall be binding on the said A. and on the Company in the same manner, and take effect in all respects as if the Company had been in existence at the date thereof, and had by these presents ratified the same.

2. The said B. shall from henceforth be discharged from all liability under or in respect of the said Agreement.

As Witness &c.

FORM 3.

Agreement for sale of business to a New Company.

An Agreement made the day of between A. B. of (hereinafter called the Vendors), of the one part, and The Limited (hereinafter called "the Company)" of the other part. Whereas the Vendors have for some time past carried on business as at and elsewhere, under the style of " & Co." : And Whereas the Company has been formed under the Indian Companies Act, 1913 to 1941 with a view, amongst other things, to the acquisition of the said business : And Whereas by clause of the articles of association of the Company it is provided that the Company shall enter into the Agreement herein referred to, being this Agreement, Now it is hereby Agreed as follows :—

[Paras 1 to 12, 14, and 16 (with necessary modifications) as in Form No. 1.]

15. This Agreement is provisional only, and is not to become absolute unless and until the Company has become entitled to commence business [This paragraph should be omitted where the purchasing company is a Private Limited Company].

[See also para 17 of Form No. 1].

Schedule.

As Witness &c.

FORM 4.

Agreement for sale of business to a New Private Company.

An Agreement made the day of between A. of (hereinafter called the Vendors) of the one part and The Limited (hereinafter called "the Company") of the other part ; Whereas the Vendors have been carrying on business as at and elsewhere, under the style of & Co. : And Whereas the Company has been formed under the Indian Companies Act, 1913 to 1941 with a view, amongst other things, to the acquisition of the said business : And Whereas by clause of the articles of association of the Company it is provided that the Company shall enter into the Agreement therein referred to being this Agreement, Now hereby it is Agreed as follows :—

1. The Vendors shall sell and the Company shall purchase : *first*, the goodwill of the said business and all trade marks connected therewith ; *secondly*, all the buildings, structures, the outhouses and other immovable properties specified, in the schedules hereto ; *thirdly*, all the plant, machinery, office furniture, patents, licences. live stock, waggons, carts, lorries, implements and utensils &c., to which the Vendors are entitled in connection with the said business ; *fourthly*, all book debts & other debts & choses in action due to the Vendors in connection with the said business with full benefit of all securities for such debts ; *fifthly*, all bills and notes of the

Vendors in connection with the said business; *sixthly*, the full benefit of all pending contracts and engagements to which the Vendors are or may be entitled in connection with the said business; and *lastly*, all other property to which the Vendors are entitled in connection with the said business.

2. The consideration for the said sale shall be the sum of Rs. which shall be satisfied by the allotment to the Vendors or their nominees fully paid up shares in the capital of the Company of the nominal value of Rs. and as to the residue of the consideration for the said sale the Company shall undertake to satisfy all the debts, liabilities and fulfil all contracts and engagements of the Vendors in relation to the said business and shall indemnify them against all proceedings, claims and demands in respect thereof.

3. The Company shall, without investigation, accept such title as the Vendors have to the premises hereby Agreed to be sold.

4. The purchase shall be completed by day of when the Vendors shall at she expense of the Company execute and do all assurances and things for vesting the said premises in the Company.

Schedule.

As Witness &c.

FORM 5.

Agreement by partners to convert the Partnership Business into a Private Limited Company.

Agreement made the day of 19 between A. of B. of and C. of

Whereas the aforesaid A., B. and C. have been carrying on business in partnership together at under the style of & Co. And Whereas the said A., B. and C. are desirous of converting their said business into a Private Limited Company, and with a view thereto have resolved to enter into this Agreement.

Now therefore it is declared as follows :—

1. A Private Limited Company shall forthwith be formed under the Indian Companies Act, 1913 to 1941 for acquiring and carrying on the said business.

2. The capital of the Company shall be fixed in the Memorandum of Association at Rs. divided into shares of Rs. each and each of the parties hereto shall subscribe the said Memorandum of Association for shares each.

3. By the Articles of Association of the said Company A., B. and C. shall be appointed permanent Directors and A. shall be appointed permanent Governing Director &c. &c.

4. The parties hereto shall enter into an Agreement (hereinafter called the "Sale Agreement") with the said Company for the sale and transfer to the Company of the aforesaid business with its goodwill and all the assets in consideration of fully paid up shares of Rs. each in the Company's capital and of the Company undertaking to pay and satisfy all the debts and liabilities of the parties hereto in connection with the said business, and to allot such shares to the parties hereto as follows, that is, to the said A. shares to the said B. shares and to the said C. shares.

5. The expenses in connection with this Agreement, the formation of the said Company and the conversion of the said business, shall be borne by the parties hereto in proportion to the shares in the Company's capital to which they are to be entitled as aforesaid.

As Witness &c.

FORM 6.

Agreement for Appointment of Managing Director.

An Agreement made the day of 19 between Limited (hereinafter called "the Company"), of the one part, and of (hereinafter called Mr.) of the other part.

Whereby it is agreed as follows :—

1. Mr. shall be and he is hereby appointed Managing Director of the Company, and as such Managing Director he shall perform the duties and exercise the powers which from time to time may be assigned to him by the Directors of the Company.

2. Mr. shall hold the said office, subject as hereinafter provided, for the term of years from the date hereof.

3. Mr. shall, unless prevented by ill health, throughout the said term, devote the whole of his time, attention and abilities to the business of the Company, and shall obey the orders from time to time of the Board of Directors of the Company and in all respects conform to and comply with the directions and regulations made by such Board and shall serve the Company well and faithfully and use his utmost endeavours to promote the interests thereof.

4. There shall be paid to Mr. as such Managing Director a fixed salary at the rate of Rs. per month beginning from .

5. In addition to the said salary Mr. shall during his tenure of office be paid a commission on the net profits after deducting (*a*) all usual charges and expenses of the business including the remuneration of directors, salaries of employees, the fixed salary of Mr. and all commission or percentage of profits payable to any employee of the business other than Mr. , (*b*) interest on the amount of the Company's reserve fund for the time being and on the balance of undivided profits carried forward in the company's profit and loss account at the rate of 6 per cent. per annum, (*c*) income-tax, super-tax and any other tax or duty for the time being charged upon or payable in respect of or measured by or affecting the profits.

6. If Mr. shall fail for three consecutive months to perform his duties as Managing Director, the Company may by notice in writing determine this Agreement.

7. If before the expiration of this Agreement the tenure of office of Mr. shall be determined by winding up of the Company or otherwise for the purpose of reconstruction or amalgamation, Mr. shall have no claim against the Company for damages.

8. The Directors shall be at liberty from time to time to appoint any other person or persons to be managing directors jointly with Mr. or to appoint any such other manager as they may think fit.

9. Mr. shall not during the continuance of this Agreement either solely or jointly with, or as manager or agent for, any other person or persons directly or indirectly carry on or be engaged in the business of .

As Witness &c.

Note.—Agreement for the appointment of a General Manager may be made on similar terms.

FORM 7.

Agreement for the Appointment of a Secretary.

An Agreement made the day of 19 between Limited (hereinafter called the Company) of the one part, and Mr. of the other part.

Whereby it is Agreed as follows :—

1. The said Mr. shall be secretary of the Company for a term of years from the date hereof.

2. There shall be paid by the Company to the said Mr. as such secretary as aforesaid a salary at the rate of Rs. per month beginning from .

3. [Here put para 3 of Form 6].

4. The said Mr. shall, during the tenure of his office, be entitled to leave of absence for a period in each year not exceeding months and the said salary of Mr. shall continue notwithstanding such leave of absence.

5. Either of the parties hereto may at any time after the day of determine this Agreement by giving to the other not less than calendar months' notice in writing, and upon the expiration of the period specified in such notice the said Mr. shall cease to be secretary to the Company.

As witness &c.

FORM 8.

Agreement to issue Fully paid up Shares to Vendors.

An Agreement made the day of 19 between Limited (hereinafter called the company) of the first part and Messrs. of (hereinafter called the Vendors of the second part).

Whereas by an agreement dated the day of 19 , made between the Vendors of the one part and the Company of the other part it was provided that as part consideration of the Vendors selling certain property to the Company the Vendors were to be allotted fully paid up shares in the Company of Rs. each, and whereas the Vendors desire to have the said shares allotted to them and to place the Company in a position to deliver to the Registrar of Companies a contract constituting the title of such allottees to such shares.

Now therefore it is Agreed that the Company shall allot to the Vendors the said fully paid up shares and that the said shares shall be numbered to inclusive.

As Witness &c.

FORM 9.

MEMORANDUM OF ASSOCIATION.

Memorandum of Association of a Company formed to purchase an existing business as a going concern.

COMPANY LIMITED BY SHARES.

MEMORANDUM OF ASSOCIATION

of

LIMITED.

1. The name of the Company is "The Limited."
2. The Registered Office of the Company will be situate in the Province of
3. The objects for which the Company is established are :—

(a) To acquire and take over as a going concern :—

The manufacturing and export business or businesses carried on by Mr. at in the District of or elsewhere, together with the goodwill thereof and the mines and mining rights belonging to the said Mr. in certain lands at aforesaid or elsewhere or otherwise in connection with the said business or businesses,

and to acquire all or any of the assets of the proprietor thereof in connection therewith and with a view thereto to adopt the agreements mentioned in Clause of the Articles of Association of the Company and to carry the same into effect with or without modification.

(b) To purchase, take on lease or concession or otherwise acquire any interest therein, or to hold, build upon, develop, sell, dispose of and deal with lands or hereditaments of any tenure, gold, silver, copper, lead, tin, quicksilver, iron, stone, mica, coal or other mines, timber and other rights, and generally any property supposed to contain minerals or precious stones of any kind, and undertakings connected therewith ; to explore, work, exercise, develop, finance and turn to account the same ; to search for, win, quarry, assay, crush, wash, dress, reduce, amalgamate, smelt, refine and prepare for market metalliferous quartz and ore, and other mineral and metal substances and precious stones, and for this purpose to buy or otherwise acquire buildings, plant, machinery, implements, appliances and tools.

(c) To manufacture and all articles of which forms a part, and to prepare for the market, import, export, buy, sell or otherwise deal with the same for any of the purposes for which the same may be used.

(d) To carry on the business of miners, exporters, merchants and producers respectively of coal, ores, graphite, rubber, mica, asbestos or any other mineral or natural product and to manufacture, prepare for the market, import, export, buy, sell, or otherwise deal in the same.

(e) To sink shafts and wells, lay down pipes, open out quarries, construct, maintain and improve railways, tramways, road ways, rope ways, telegraph lines, telephone lines, electric light, apparatus, wharves, reservoirs, water-courses, water-woks, warehouses, sheds, offices and other buildings and works, calculated directly or indirectly to advance the interests of the Company and to pay or contribute to the expenses of constructing, maintaining and improving any such works and to carry on the business of railway and tramway proprietors and carriers of passengers and goods.

(f) To construct, purchase, lease or otherwise acquire any railway or tramway in or through the Company's lands or in the vicinity thereof and to enter into (either alone or jointly with others and either with or without the concurrence of owners or other persons interested in lands or mining or other rights therein adjacent to or in the vicinity of the Company's lands) any contracts, engagements or arrangements with any Railway Company or persons regarding any line or branch line of railway or tramway which may at any time be constructed so as to extend to the Company's land or any place or places in the vicinity thereof.

(g) To purchase, take on lease or in exchange, hire or otherwise acquire any movable or immovable property and any rights or privileges which the Company may think necessary or expedient for the purposes of its business and in particular any lands, buildings, works, easements, on such terms as may be deemed useful, and in particular to tenants, customers of, and other persons having dealings with the Company and to guarantee the performance of contracts by any such persons.

(h) To sell or sublet any concession or license obtained, or contract entered into and generally to sell the whole or any part of the property and business of the Company for cash or for the shares or obligations of any person or persons or of any other Company having objects altogether or in part similar to those of the Company ; and to hold any such shares or obligations or to distribute them or any of them among the members of the Company, and to assist in forming and to subscribe for shares in any company intended to take over any part of the business or assets of the Company.

(i) To act as Insures or Underwriters of the property of the Company either wholly or partially, and either solely or together with another or other person or persons or body or bodies, and to insure the whole or any part of the property of the Company either fully or partially, to protect and indemnify the Company from liability or loss in respect thereof, either fully or partially, and also to insure and protect and indemnify either on mutual principle or otherwise, and to accept the whole or any part of the marine risk and liability of the Company as underwriters.

(j) To invest and deal with the funds of the Company upon such securities and in such manner as shall from time to time be thought necessary or for the benefit of the Company, and to create any Reserve Fund, Sinking Fund, Insurance Fund, Depreciation Fund or Provident Fund thereout.

(k) To borrow or raise or secure the payment of money in such other manner as the Company shall think fit and in particular by the issue of debentures, debenture bonds or debenture stock, perpetual or otherwise, mortgage or any other securities charged or based upon the undertakings of the Company or any part of its property both present and future, including the uncalled capital and the rights of the Company or without any such security, and upon such terms as to priority or otherwise, and generally to borrow money in such manner as the Company shall think fit.

(l) To create and issue ordinary, preference and guaranteed shares or stock and to redeem, cancel and accept surrenders of such shares or stock.

(m) To draw cheques, make, accept, indorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, charter-parties, warrants, debentures and other negotiable or transferable instruments.

(n) To enter into any arrangements with any Governments or authorities Central, Provincial, Municipal, Local or otherwise, public or quasi public bodies that may seem conductive to the Company's objects or any of them, and to obtain from any such Government or authority any rights, privileges and concessions which the Company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.

(o) To remunerate any person or Company, and pay commissions or brokerage in cash or otherwise howsoever for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any shares in the Company's capital or any debentures or other securities of the Company, and to adopt, become bound by and carry into effect any agreement or arrangements which may have been entered into for that purpose, by any person or company as trustees for or on behalf of the Company.

(p) To establish at any place any local board or agency or agent for managing any of the affairs of the Company in any specified locality. district, province or country, and to appoint the Company's agents to be also such agent or member of such local board, and in case the Company's agents refuse to act as such agent or member, to appoint any person or persons to be such agent or to be members of such local board or agents, either directly or through the Company's agent with such remuneration as the Board may fix or determine.

(q) To do all such other things as are incidental, or as the Company may think conducive, to the attainment of the above objects or any of them.

4. The liability of the members is limited.

5. The Capital of the Company is Rs. divided into shares of Rs. each with power to increase or reduce the capital, to divide the shares in the capital for the time being into several classes, and to attach thereto respectively such preferential, deferred, qualified or special rights, privileges or conditions as may be determined by or in accordance with the regulations of the Company and to vary, modify or abrogate any such rights, privileges, or conditions in such manner as may for the time being be provided by the regulations of the Company and consolidate or subdivide the shares and issue shares of higher or lower denomination.

We, the several persons whose names and addresses are subscribed are desirous of being formed into a Company in pursuance of the Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite to our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.	Names, Addresses and Descriptions of Witnesses.
1.		
2.		
3.		
4.		
5.		
6.		
7.		

Dated this day of 19 .

FORM 10.

Memorandum of association of company intended to do general business.

MEMORANDUM OF ASSOCIATION

of

LIMITED.

1. The name of the Company is Limited.

2. The Registered Office of the Company will be situate in the Province of

3. The objects for which the company is established are all or any of the following (and in construing the following sub-clauses the scope of no one of such sub-clauses shall be deemed to limit or affect the scope of any other of such sub-clauses) :—

(1) To buy, sell, import, export, manufacture, manipulate, treat, prepare and deal in merchandise, commodities and articles of all kinds, and generally to carry on business as merchants, importers and exporters.

(2) To carry on the businesses of carriers by land or water, of managing agents, secretaries, shipping agents, insurance agents, or manufacturers, mine-owners, mercantile agents, and any kind of commercial, financial and agency business.

(3) To carry on all or any of the businesses of or usually carried on by zemindars or land companies; and to irrigate, cultivate, improve and develop any lands and properties whether belonging to the company or not, and to develop the resources thereof by clearing, draining, fencing, cultivating, planting, manuring, farming, letting, or otherwise, with power to advance money to other persons for any of the purposes aforesaid.

(4) To take on lease, hire, purchase or acquire by license or otherwise any lands, plantations, rights over or connected with lands, mills, factories, plant, buildings, works, vessels, boats, barges, launches, lorries, cars, wagons, carts, machinery, apparatus, stock-in-trade, patents, inventions, trade-marks, rights, privileges and movable or immovable property of any description which may be deemed necessary or convenient for any business which the Company is authorised to carry on.

(5) To erect, construct, work, maintain, improve or alter, or assist in the erection, construction, working, maintenance, improvement or alteration of any mills, factories, plant, machinery, works, railways, tramways, sidings, jetties, wharves, bridges, roads, ways, water-works, tanks, wells, reservoirs, aqueducts, canals, vessels, boats, barges, launches, lorries, cars, wagons, carts and other works and conveniences and to contribute to the expense of constructing, improving, maintaining and working any of the same, and to pull down, rebuild, and repair any of the same.

(6) To lease, let out on hire, mortgage, pledge, sell or otherwise dispose of the whole or any part of the undertaking of the company, or any lands, business, property, rights or assets of any kind of the company or any share or interest therein respectively, in such manner and for such consideration as the Company may think fit, and in particular for shares, debentures or securities of any other corporation having objects altogether or in part similar to those of the Company.

(7) To pay any premiums or salamis and to pay for any property, rights or privileges acquired by the company or for services rendered or to be rendered in connection with the promotion of or the business of the Company or to acquisition of any property for the Company or otherwise, either wholly or partially in cash or in shares, bonds, debentures or other securities of the Company, and to issue any such shares either as fully paid up or with such amount credited as paid up thereon as may be agreed upon, and to charge any such bonds, debentures or other securities upon all or any part of the property of the Company.

(8) To pay all or any costs, charges and expenses preliminary and incidental to the promotion, formation, establishment and registration of the Company.

(9) To purchase or otherwise acquire and undertake all or any part of the business, property and liabilities of any person or corporation carrying on any business

which the Company is authorised to carry on, or possessed of property suitable for the purposes of the Company.

(10) To promote any other company for the purpose of acquiring all or any of the property of this Company or advancing directly or indirectly the objects or interests thereof, and to take or otherwise acquire and hold shares in any such company, and to guarantee the payment of any debentures or other securities issued by any such company.

(11) To take or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those of this Company, or carrying on any business capable of being conducted so as directly or indirectly to benefit this Company.

(12) To enter into partnership or into any arrangement for sharing profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or company carrying on or engaged in or about to carry on or engage in any business or transactions which this Company is authorised to carry on, or engage in any business or transactions capable of being conducted so as directly or indirectly to benefit this Company, and to take or otherwise acquire and hold shares or stock in any such company.

(13) To draw, make, accept, indorse, discount, execute and issue cheques, promissory notes, bills of exchange and other negotiable or transferable instruments.

(14) To invest moneys of the Company not immediately required upon such securities as may from time to time be determined.

(15) To lend money to such persons and on such terms as may seem expedient, and, in particular, to customers of and to other persons having dealings with the Company, and to guarantee the performance of contracts by members of or persons having dealings with the Company.

(16) To appoint Agents and Managers and constitute Agencies of the Company in India or in any other country whatsoever.

(17) To borrow or raise or secure the payment of money in such manner as the Company shall think fit, and in particular by the issue of debentures, charged upon all or any of the Company's property (both present and future) including its uncalled capital and to purchase, redeem, or pay off any such securities.

(18) To pay brokerage or commission to any person or persons in consideration of his or their subscribing, or agreeing to subscribe, whether absolutely or conditionally, for any shares or debentures of the Company, or procuring or agreeing to procure subscriptions whether absolute or conditional for the same, which brokerage or commission may be paid either in cash or in debentures or shares of the Company credited as fully or partly paid up.

(19) To grant pensions, allowances, gratuities and bonuses to employees or ex-employees of the Company or the dependants of such persons, and to support or subscribe to any charitable or other institutions, clubs, societies, funds or objects.

(20) To distribute any of the Company's property among the members in specie.

(21) To do all or any of the above things in any part of the world, and either as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others, and by or through agents, sub-contractors, trustees or otherwise.

(22) To do all such other things as are incidental or as the Company may think conducive to the attainment of the above objects or any of them.

4. The liability of the members is limited.

5. The capital of the Company is Rs. divided into preference shares of Rs. each and ordinary shares of Rs. each and such preference shares shall confer the right to a fixed cumulative preferential dividend at the rate of per cent. per annum on the capital for the time being paid up thereon, but shall not confer the right to any further participation in profits, and shall not confer on the holders the right to attend or vote either in person or by proxy at any General Meeting or to have notice of any meeting.

Upon any increase of capital the Company is to be at liberty to issue any new shares with any preferential, deferred, qualified or special rights, privileges or conditions attached thereto.

The rights for the time being attached to the preference shares in the initial capital or to any shares having preferential, deferred, qualified or special rights, privileges or conditions attached thereto, may be altered or dealt with in accordance with the Articles of Association of the Company but not otherwise.

We the several persons whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the Company set opposite to our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each Subscriber.	Names, Addresses and Descriptions of Witnesses.

Dated the day of 19 .

FORM 11.

Memorandum of Association of a company limited by guarantee and registered in pursuance of section 26 of the Indian Companies Act, 1913.

MEMORANDUM OF ASSOCIATION

of

THE...............ASSOCIATION/ INSTITUTE/ SOCIETY.

1. The names of the Association is Association.
2. The registered office of the Association will be situate at
3. The objects for which the Association is established are :—
   - (1) To
   - (2) To
   - (3) To
   - (4) The doing of all such other lawful things as are incidental or conducive to the attainment of the above objects.

4. The income and property of the Association shall be applied solely towards the promotion of the objects of the company as set forth in the memorandum of association ; and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise however by way of profit, to the members of the Association :

Provided that nothing herein shall prevent the payment, in good faith, of remuneration to any officers or servants of the Association, or to any member thereof, or other person, in return for any services actually rendered to the Association :

Provided further that no member of the council of management or governing body of the Association shall be appointed to any salaried office of the Association, or any office of the Association paid by fees, that no remuneration shall be given by the Association to any member of such council or governing body except repayment of out-of-pocket expenses and interest on money lent or rent for premises demised to the Association.

5. The fourth paragraph of this memorandum of association is a condition on which a license is granted by the Government to the Association in pursuance of section 26 of the Indian Companies Act, 1913.

6. The liability of the members is limited.

7. Every member of the Association undertakes to contribute to the assets of the Association, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Association contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of the winding-up of the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs.

8. If upon the winding up or dissolution of the Association there remains after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Association, but, if and so far as effect can be given to the next provision, shall be given or transferred to some other institution or institutions having objects similar to the objects of the Association, to be determined by the members of the Association at or before the time of dissolution, and in default thereof by such Court as may have jurisdiction in the matter.

9. True accounts shall be kept of the sums of money received and expended by the Association and the matter in respect of which such receipt and expenditure takes place, and of the property, credits and liabilities of the Association, and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulation for the time being of the Association, shall be open to the inspection of the members. Once at least in every year, the accounts of the Association shall be examined and the correctness of the balance-sheet ascertained by one or more properly qualified auditor or auditors.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into an association in pursuance of this memorandum of association.

Names.	Addresses.	Descriptions.

Witness to the above signatures of..
Name..Address............................Description.

Witness to the above signature of..

[N. B. Charitable and religious societies, scientific societies, law societies, clubs, schools, colleges, hospitals, exchanges and many other miscellaneous societies have been registered without the word "limited" under the above mentioned provision of the law].

FIRST OBJECT CLAUSE OF A COMPANY TAKING OVER THE BUSINESS OF OR AMALGAMATING WITH ANOTHER COMPANY.

FORM 12.

(1) *To Acquire a going Concern.*

1. To acquire and take over as a going concern the business now carried on at under the style or firm of , and all the assets and liabilities of the proprietors of that business in connection therewith and with a view thereto to enter into the agreement referred to in clause—of the Company's articles of association, and to carry the same into affect with or without modifications.

FORM 13.

(2) *Another.*

1. To acquire &c. and with a view thereto to adopt and carry into effect, with or without modification an agreement which has already been prepared and is expressed to be made between A. of the one part and B. on behalf of the Company of the other part and a copy whereof has for the purpose of identification been subscribed by [a pleader, solicitor or advocate.]

FORM 14.

(3) *To Acquire and Amalgamate with other Concerns.*

1. To acquire, take over, and amalgamate with the undertakings of the Co., Ltd. and of the Co., Ltd. and with a view thereto to enter into the agreements &c.

FORM 15.

(4) *To Acquire the Undertaking of a Company and Shares therein.*

1. To acquire and take over undertaking of the Co. Ltd., and with a view thereto acquire all or any of the shares, debts and liabilities of that company, and for that purpose to adopt agreement dated and made between A. of the one part and B. of the other part and to carry the same into effect &c.

MAIN OBJECT CLAUSES OF COMPANIES.

FORM 16.

Aerial Conveyances.

1. To establish, maintain, and work lines of aerial conveyance between and and between other places to be from time to time selected by the Company.

2. To carry passengers and goods by air, railway, tramway, motor conveyances, ships, boats, vessels barges and other means.

3. To manufacture, buy, sell, prepare, let on hire, and deal in aerial conveyances of all kinds and the component parts thereof, and all kinds of machinery and apparatus for use in connection therewith.

4. To carry on the businesses of mechanical engineers, motor engineers, electrical engineers, and ground engineers in all their branches.

5. To acquire, provide and maintain hangars, garages, sheds, aerodromes and accommodation for or in relation to aerial conveyances.

6. To establish and maintain schools and workshops for training students, apprentices and as fliers, pilots, ground engineers, motor engineers, mechanical engineers and electrical engineers.

ASSURANCE AND INSURANCE COMPANIES.

FORM 17.

(1) *Life Assurance Company.*

1. To carry on the business of a Life Assurance Company as provided in the Insurance Act, being Act IV of 1938 or any other Act which may, in future amend, modify, extend or replace the said Act.

2. To carry on the business of life assurance in all its branches, and in particular to grant or effect assurances of all kinds for payment of money by way of single payment or several payments, or by way of immediate or deferred annuities or otherwise upon the happening of all or any of the following events, namely, the death, or marriage or birth, or survivorship, or failure of issue of, or the attainment of a given age, of or by any person or persons, or the expiration of any fixed or ascertainable period, or the occurrence of any contingency or event which would or might be taken to affect the interest, of any person or persons in any property and also (in connection with assurance on the life or lives of the same person or persons, but not otherwise) to grant assurances payable upon or after the happening of personal injuries caused by accident of any description or upon the happening of sickness or bodily or mental incapacity.

3. To grant annuities of all kinds, whether dependent on human life or otherwise and whether immediate or deferred and whether contingent or otherwise.

4. To reassure counter-reassure all or any risk and to undertake all kinds of reassurance and counter-reassurance connected with any of the business aforesaid.

5. To give to any class or section of those who assure, or have other dealings with the company, any rights over or in relation to any fund or funds, or right to participate in the profits of the company or in the profits of any particular branch or part of its business, or any other special privileges, advantages or benefits.

FORM 18.

(2) *Accident Insurance.*

1. To grant assurances of all kinds for payment of money by way of a single payment or by several payments, or by way of annuities, or otherwise, upon the happening of personal injuries caused by accident of any description, or upon the happening of sickness or bodily and mental incapacity, and generally to carry on the business of accident insurance in all its branches.

FORM 19.

(3) *Fire Insurance Company.*

1. To carry on the business of fire insurance in all its branches, and to grant insurances against injury or damage to or loss of property directly or indirectly caused by or resulting from fire, lightning or explosion.

FORM 20.

(4) *Marine Insurance Company.*

1. To carry on the business of marine insurance in all its branches, and in particular, without prejudice to the generality of the foregoing words to make or effect insurance on ships, vessels, boats and crafts of kinds, and on goods, merchandise, live or dead stock, luggage, effects, specie, bullion, or other property, respondentia and bottomry interests, commissions, profits and freights.

2. To carry on all kinds of transit insurance business, and generally every kind of insurance and re-insurance business, except the issuing of policies of assurance upon human life.

FORM 21.

(5) *Provident Insurance Society.*

1. To carry on the business of a Provident Insurance Society as provided in the Insurance Act being Act IV of 1938, or any other Act which may in future amend, modify, extend or replace the said Act.

2. To receive premiums or contributions for insuring money to be paid by the Company to its policy-holders, their nominees or assignees on the birth, or marriage of

any person or on the death of the person paying the premium or contribution or his wife, child, parent, brother or sister, or on the happening of such other contingencies or class of contingencies as are or may be prescribed under the aforesaid Act or Acts.

3. [Select any other clause (not inconsistent with Act IV of 1938) from Form No. 17 that may be considered suitable].

4. To carry on the business of a Life Assurance Company under the Insurance Act (Act IV of 1938) by fulfilling the conditions laid down in the said Act whenever the Company may deem it expedient to do so.

FORM 22.

(6) *Insurance of all kinds.*

1. To carry on all kinds of insurance business, and all kinds of guarantee and indemnity business, and in particular, without prejudice to the generality of the foregoing words, to carry on life, fire, marine accident, employers' liability, workmen's compensation, disease, sickness, survivorship, failure of issue, burglary, robbery, theft, fidelity and transit insurance.

2. To grant annuities of all kinds, whether dependent on human life or otherwise and whether perpetual or terminable, immediate or deferred, absolute, contingent or otherwise.

3. To lend and advance money upon or without security, including the lending of money upon policies issued by the Company or in respect of which it is liable, and to apply any of the funds of the Company in buying up, cancelling, extinguishing, or obtaining a release from any policy, contract, or liability.

BANKING, FINANCIAL AND LOAN COMPANIES.

FORM 23.

(1) *Banking Company.*

1. To carry on the business of banking in all its departments, including the accepting of deposits of money on current account or otherwise subject to withdrawal by cheque, draft or order. [Here put in all or any of the clauses (1) to (17) of s. 277F (*ante.*)]

FORM 24.

(2) *Financial Company.*

1. To lend money and negotiate loans.

2. To draw, accept, indorse, discount, buy, sell, and deal in bills of exchange, promissory notes, bonds, debentures, coupons and other negotiable instruments and securities.

3. To issue on commission, subscribe for, take, acquire and hold, sell, exchange and deal in shares, stocks, bonds, obligations or securities of any Government, local authority or company.

4. To form, promote, subsidise and assist companies, syndicates and firms of all kinds.

5. To give any guarantee for the payment of money or the performance of any obligation or undertaking.

6. To undertake and execute any trust.

7. To acquire, improve, manage, work, develop, exercise all rights in respect of leases and mortgages, and to sell, dispose of, turn to account, and otherwise deal with, property of all kinds, and in particular, land, buildings, concessions, patents, business concerns and undertakings.

8. Generally to carry on and undertake any business, undertaking, transaction or operation commonly carried on or undertaken by bankers, capitalists, promoters, financiers, concessionaries, contractors, merchants and any other business.

FORM 25.

(3) *Loan Company.*

1. To borrow or take deposits of money at interest or otherwise from any person or persons, local authority or Government and advance, lend or deposit any such money or other moneys of the Company for the time being on such security or otherwise as the Company deem expedient.

2. To acquire any movable or immovable property which the Company may think it desirable to acquire by way of investment or with a view to re-sale or otherwise.

3. To carry on business as capitalists and financiers and to carry on any other business which may seem to be capable of being conveniently carried on in connection with any of the objects of the company, or calculated directly or indirectly to enhance the value of or facilitate the realization of, or render profitable, any of the Company's securities, properties or rights.

FORM 26.

Building Company.

1. To purchase, take on lease or in exchange, or otherwise acquire any lands and buildings in/at—or elsewhere, and any estate or interest in, and any rights connected with, any such lands and buildings.

2. To develop and turn to account any land acquired by or in which the Company is interested, and in particular by laying out and preparing the same for building purposes.

3. To construct, maintain, improve, develop, work, control and manage any waterworks, gas works, reservoirs, roads, tramways, electric power, heat and light supply works, telephone works, hotels, clubs, restaurants, baths, places of worship, places of amusement, pleasure grounds, parks, gardens, reading rooms, stores, shops, dairies, and other works and conveniences which the company may think directly or indirectly conducive to these objects, and to contribute or otherwise assist or take part in the construction, maintenance, development, working, control and managemen thereof.

4. To carry on all or any of the following businesses, namely, of builders and contractors, decorators, merchants and dealers in stone, sand, lime, bricks, timber, hardware and other building requisites, brick and tile and terra-cotta makers, job masters, carriers, licensed victuallers, and house agents.

FORM 27.

Brickmakers and Potters.

1. To carry on the business of manufacturers of bricks, tiles, pipes, pottery, earthenware, china and terra-cotta and ceramic ware of all kinds.

2. To carry on the business of paviors and manufacturers of and dealers in artificial stone, whether for building, paving or other purposes.

3. To carry on the businesses of idol makers and painters.

FORM 28.

Carrying Company.

1. To carry on all or any of the following businesses, that is to say, general carriers, railway and forwarding agents, warehousemen and common carriers and any other businesses which can conveniently be carried on in connection with the above.

2. To carry passengers and goods by any conveyance whatsoever on land or water.

3. To carry on the business of general contractors.

FORM 29.

Chemists and Druggists.

1. To carry on the businesses of chemists druggists, oilmen, importers and manufacturers of and dealers in pharmaceutical, medicinal, chemical, industrial and other preparations and articles, compounds, cements, oils, paints, pigments and varnishes, drugs, dyeware, and paint and colour grinders, makers of and dealers in proprietary articles of all kinds, and of electrical, chemical, photographical, surgical, and scientific apparatus and materials.

2. To buy, sell, manufacture, refine, manipulate, import, export, and deal in all substances, apparatus, and things capable of being used any such businesses as aforesaid, or required by customers of or persons having dealings with the Company, either by wholesale or retail.

3. To carry on business as providers of all requisites for hospitals, patients and invalids.

FORM 30.

Cinema and Film Company.

1. To carry on the business of proprietors or managers of theatres, places and halls and cinematographic shows and exhibitions, both silent and talkie, and to permit the Company's premises to be used for such other purposes as may seem expedient.

2. To purchase, hire or otherwise acquire any photographic and other apparauts in connection with cinematographic shows and exhibitions.

3. To produce cinematograph films, and to let on hire or sell the same.

4. To import foreign films, machinery, apparatus, camera &c., and to export Indian films to foreign countries.

5. To purchase films or to take on hire films from other person and to re-let on hire the same.

6. To acquire by purchase, lease, grant, assignment, transfer, exchange or otherwise lands, gardens, premises and to erect buildings, cinema houses or houses for show pictures, studio, laboratory, factory, and to carry on any business capable of being conducted so as to directly or indirectly benefit the Company.

FORM 31.

Cycle manufacturing Company.

1. To carry on the business of manufacturing cycles, bicycles, tricycles and carriages of all kinds, and of all articles and things used in the manufacture, maintenance and working thereof, and also all apparatus and implements and things for use in sports or games.

2. To carry on the business of mechanical engineers, machinists, fitters, millwrights, founders, wire drawers, tube makers, metallurgists, sadlers, galvanizers, japanners, annealers, enamellars, painters, spray painters, electro-platers and packing case makers.

3. To buy, repair, alter, and deal in apparatus, machinery materials and article of all kinds which shall be capable of being used for the purposes of any business herein mentioned or likely to be required by customers of any such business.

FORM 32.

Dairy Company.

1. To carry on the business as producers of, and dealers in dairy, farm and garden produce of all kinds, and in particular milk, cream, butter, cheese, poultry, eggs, fruits and vegetables.

2. To carry on business as cow keepers, goat keepers, farmers, millers and market gardeners and as manufacturers of all kinds of condensed milk, jam, pickles and preserved provisions of all kinds.

FORM 33.

Drapers and Furnishers.

1. To carry on the business of drapers and furnishers in all its branches.

2. To carry on all or any of the businesses of silk mercers, silk weavers, cotton spinners, cloth manufacturers, furriers, haberdashers, hosiers, manufacturers, importers and wholesale and retail dealers of and in textile fabrics of all kinds, milliners, dressmakers, tailors, hatters, clotheirs, outfitters, glovers, lace manufacturers and feather dressers.

FORM 34.

Electric Company.

1. To carry on the business of electrical engineers and contractors, suppliers of electricity, manufacturers of and dealers in electric, magnetic, galvanic, and other apparatus, mechanical engineers, suppliers of electric light, heat, sound and power, and to acquire any inventions &c., and to construct railways and tramways and work the same by steam, gas, oil, electricity or other power.

2. To carry on in any part of India and Burma or elsewhere the business of an electricity supplying company in all its branches, and in particular to construct, lay down, establish, fix, and carry out all necessary cables, wires, lines, accumulators, lamps and works, and to generate, accumulate, distribute and supply electricity and light and power to cities, towns, streets, docks, markets, theatres, buildings and places both public and private.

3. To carry on the business of electricians, mechanical engineers, suppliers of electricity for the purpose of light, heat, motive power, or otherwise, and manufacturers of and dealers in all apparatus and things required for or capable of being used in connection with the generation, distribution, supply, accumulation and employment of electricity.

4. To manufacture, import, export, deal in wholesale or retail any radiographs, phonographs, dictaphones, television sets and all sorts of electrical and wireless sets, instruments and articles.

FORM 35.

Guarantee and Indemnity Company.

1. To guarantee the fidelity of persons filling or about to fill situation of trust or confidence, and the due performance and discharge by such persons of all or any of the duties and obligations imposed on them by contract or otherwise.

2. To guarantee the due performance and discharge by receivers, official and other liquidators, committees, guardians, executors, administrators, trustees, attorneys, brokers, and agents of their respective duties and obligations.

3. To guarantee the payment of money secured by or payable under or in respect of debenture bonds, debenture stock, contracts, mortgages, charges, obligations, and securities of any company or of any authority, Central, Provincial, municipal, local, or otherwise, or of any persons whomsoever, whether corporate or not.

4. To guarantee persons filling or about to fill situations of trust or confidence against liabilities in connection therewith, and in particular against liabilities resulting from the misconduct of any co-trustee, co-agent, sub-agent, or other person, or from the insufficiency, imperfection, or deficiency of title to property or in any security, or from any bankruptcy, insolvency, fraud, or tortious act on the part of any other persons, or from any error of judgment or misfortune.

5. To guarantee the title to or quiet enjoyment of property either absolutely or subject to any qualifications or conditions, and to guarantee persons interested or about to become interested in any property against any loss, actions, proceedings, claims, or demands in respect of any insufficiency or imperfection or deficiency of title, or in respect of any incumbrances, burdens, or outstanding rights.

6. Generally to carry on and transact every kind of guarantee business, and every kind of indemnity business, and every kind of counter guarantee and counter indemnity business, and generally every kind of insurance and re-insurance business, whether of the like or a different kind, and whether now known or hereafter devised except the issuing of policies of insurance upon human life, fire insurance and marine insurance.

7. To contract with leaseholders, borrowers, lenders, annuitants, and others for the establishment, accumulation, provision, and payment of sinking funds, redemption funds, depreciation funds, renewal funds, endowment funds, and any other special funds, and that either in consideration of a lump sum or of an annual premium or otherwise, and generally on such terms and conditions as may be arranged.

8. To furnish and provide deposits and guarantee funds required in relation to any tender or application for contract, concession, decree, enactment, property, or privilege, or in relation to the carrying out of any contract, concession, decree, or enactment.

9. To receive money, securities, and valuables of all kinds on deposit at interest or for custody, and generally to carry on the business of a safe deposit company.

10. To lend, deposit, or advance money, securities, and property to or with such persons and on such terms as may seem expedient.

11. To carry on other businesses which may seem to the Company capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of or render profitable any of the Company's properties or rights.

12. To grant policies or enter into contracts for or in respect of the matter aforesaid on such terms and conditions as may be arranged.

13. To accumulate capital for any of the purposes of the Company and to appropriate any of the Company's assets to specific purposes, either conditionally or unconditionally, and to admit any class or section of those who insure or have any dealings with the Company to any share in the profits thereof, or in the profits of any particular branch of the Company, business, or to any other special rights, privileges, advantages, or benefits.

14. To acquire and undertake the whole or any part of the business, property and liabilities of any person or company carrying on any business which the Company is authorized to carry on, or prossesed of property suitable for the purposes of the Company.

15. Generally to purchase, take on lease, or in exchange, hire, or otherwise acquire any movable or immovable property or actionable claim and any rights or privileges which the Company may think necessary or convenient with reference to any of these objects, or the acquisition of which may seem calculated to facilitate the realization of any securities held by the Company, or to prevent or diminish any apprehended loss or liability, or which may seem capable of being profitably dealt with by way of resale or otherwise, and in particular any land, buildings, ground rents, reversions, policies of assurance, life interests, choses in action, book debts and other assets.

16. To pay, satisfy or compromise any claims made against the Company which it may seem expedient to pay, satisfy or compromise notwithstanding that the same may not be valid in law.

FORM 36.

Hotel Company.

1. To carry on the business of hotel, restaurant, cafe, tavern, beer-house, refreshment room and lodging-house keepers, licensed victuallers, wine, beer, and spirit merchants, importers and manufacturers of aerated, mineral, and artificial waters and other drinks, purveyors, caterers for the public generally, carriage, taxi, motor car and motor lorry proprietors, dairy men, ice merchants, importers and brokers of food, live and dead stock and foreign produce of all descriptions, hairdressers, perfumers, chemists, proprietors of clubs, baths, dressing rooms, laundries, reading, writing and newspaper rooms, libraries, grounds, and places of amusement, recreation, sport, entertainment

and instruction of all kinds, tobacco, cigar and cigarette merchants, agents for railway and shipping companies and carriers, theatrical and opera-box office proprietors and general agents, and other businesses which can conveniently be carried on in connection therewith.

FORM 37.

Import and Export Company.

1. To carry on all or any of the business of importers, exporters, refrigerators, shipowners, shipbuilders, caterers of ship or other vessels, warehousemen, merchants, ship and insurance brokers, carriers, forwarding agents, warfingers, sheep farmers, stock owners and breeders, pasturers, graziers, preservers and packers of provisions of all kinds, quarry owners, brickmakers, tanners, carpenters and mechanical engineers &c. &c.

FORM 38.

Jewellers.

1. To carry on business as goldsmiths, silversmiths, jewellers, gem merchants, watch and clock repairers, electro-platers, dressing bag makers, importers and exporters of bullion, and to buy, sell and deal (wholesale and retail) in bullion, precious stones, jewellery, watches, clocks, gold or silver plates, cups, shields, electro-plate, cutlery, dressing bags, bronzes, articles of vertu, objects of art, and such other articles and goods as the company may consider capable of being conveniently dealt in relation to its businesses, and to manufacture and establish factories for manufacturing goods for the above businesses.

FORM 39.

Laundry.

1. To carry on at   and elsewhere the business of a steam and general laundry, and to wash, clean, purify, scour, bleach, wring, dry, iron, colour, dye, disinfect, renovate and prepare for use all articles of wearing apparel, household, domestic and other cotton, silk, and woolen goods, linen and fabrics of all kinds, and to buy, sell, hire, manufacture, repair, let on hire, alter, improve, treat and deal in all apparatus, machines, materials and articles of all kinds, which are capable of being used for any such purposes.

FORM 40.

Meat and Cattle Importing Company.

1. To carry on the business of importers of meat, live cattle and sheep, and also that of dealers in cattle and sheep generally, and in all branches of such respective trades of businesses.

2. To buy and sell by wholesale or retail in India or elsewhere, all kinds of meat, and generally to carry on the trade or business of a meat salesman in all its branches.

3. To acquire by purchase or otherwise ranches and sheep farms and to carry on the trades or businesses of cattle rearers and sheep farmers, fellmongering, tanning, and warehousing, generally, preserved meat manufacturers, dealers in hides, fat, tallow, grease, offal, and other animal products.

4. To erect and build abattoirs, freezing-houses, warehouses, sheds, and other buildings necessary or expedient for the purposes of the Company.

5. To purchase, charter, hire, build, or otherwise acquire, steam and other ships or vessels and to employ the same in the conveyance of passengers, mails, and merchandise of all kinds, and to carry on the business of ship owners, barge owners, and lightermen in all its branches.

FORM 41.

Mechanical Engineers.

1. To carry on the business of iron-founders, mechanical engineers, manufactures of machinery and implements of all kinds, tool makers, brass-founders, metal-workers, boiler-makers, mill-wrights, iron and steel converters, smiths, wood workers, builders, painters, metallurgists, electrical engineers. water-works engineers, gas generators, farmers, printers, carriers and merchants, and to buy, sell, manufacture, repair, convert, alter, let on hire, and deal in machinery, implements, rolling stock, and hardware of all kinds, and to carry on any other business which may seem to the Company capable of being conveniently carried on in connection with the above, or otherwise calculated, directly or indirectly, to enhance the value of any of the Company's property and rights for the time being.

2. To undertake and execute any contracts for works involving the supply or use of any machinery, and to carry out any auxiliary or other works comprised in such works.

FORM 42.

Mining Company.

1. To purchase, take on lease, or otherwise acquire any mines, mining rights, and metaliferous, land in......or elsewhere, and any interest therein, and to explore, work, exercise, develop, and turn to account the same.

2. To crush, win, get, quarry, smelt, calcine, refine, dress, amalgamate, manipulate, and prepare for market, ore, metal and mineral substances of all kinds, and to carry on any other metallurgical operations which may seem conducive to any of the objects of the Company.

3. To buy, sell, manufacture, and deal in minerals, plants, machinery, implements, conveniences, provisions, and things capable of being used in connection with metallurgical operations, or required by workmen and others employed by the Company.

4. To construct, carry out, maintain, improve, manage, work, control, and superintend, any roads, ways, tramways, railways, bridges, reservoirs, watercourses, aqueducts, wharves, furnaces, mills, crushing works, hydraulic works, electrical works, factories, warehouses, shops, and other works and conveniences which may seem directly or indirectly conducive to any of the objects of the Company, and to contribute to, subsidise, or otherwise aid or take part in any such operations.

5. To search for, get, work, raise, make merchantable, sell and deal in iron, coal, ironstone, brick-earth, mica, lead, tin, copper, graphite, asbestos and other metals, minerals and substances and to manufacture and sell fuel and other products.

6. To carry on business as manufacturers of chemicals and manures, distillers, dyemakers, gas makers, mametallurgists and mechanical engineers and to carry on &c.

FORM 43.

Motor Car Manufacturing Company.

1. To carry on the business of manufacturers, dealers, hirers, repairers, cleaners and storers of motor cars, motor cycles, motors, motor boats, motor launches, motor lorries, motor vans, aeroplanes, hydrsoplanes, sea planes and other conveyances of all descriptions whether propelled or assisted by means of petrol, spirit, steam, gas, electricity, animal or other powers and of engines, chassis, bodies and other things used for, in or in connection with the above mentioned things.

2. To buy, sell, let on hire, repair, alter any machinery, component parts, accessories and fitting of all kinds for things mentioned in clause 1 above or used in, or capable of being used in connection with the manufacture, maintenance and working thereof.

3. To carry on the business of garage keepers and suppliers of and dealers in petrol, electricity and other motive power to things mentioned in clause 1 above.

4. To carry on the business of mechanical engineers, electrical engineers, fitters, founders, metallurgists and painters.

5. To do all other things as are conducive to the attainment of the aforesaid objects.

FORM 44.

Motor Omnibus Company.

1. To carry on at and elsewhere the business of running motor omnibuses, taxicabs, lorries and motor cars of all kinds and on all such lines as the Company may think fit, and transport passengers and goods and generally to carry on the business of common carriers by land and water by any vehicle whatsoever.

2. To carry on the business of manufacturers of motor omnibuses, motor cars, lorries, taxicabs &c., and generally of all kinds of omnibuses and vehicles for the transport of persons and goods, whether propelled or moved by electricity, steam, oil, vapour, gas or other motive or mechanical power.

3. To carry on the business of mechanical engineers and carriage builders in all their respective branches.

4. To manufacture, buy, sell, exchange, alter, improve, manipulate, prepare for market, and otherwise deal in all kinds of plant, machinery, apparatus, tools, utensils, and things necessary or convenient for carrying on any of the above businesses or usually dealt in by persons engaged in the like businesses.

FORM 45.

Company to run Aerial Conveyances.

1. To establish, maintain and work lines of aerial conveyances, seaplanes &c. between two or more places in India and between other places in and outside India to be from time to time selected by the company.

2. To manufacture, buy, sell, prepare let on hire and deal in aerial conveyances of all kinds and the component parts thereof, and all kinds of machinery and apparatus for use in connection therewith.

3. To acquire, construct, provide, and maintain aerodromes, hangars, sheds, garages and accomodations for or in connection with all kinds of aerial conveyances.

4. To train and to employ ground engineers, pilots, fliers, assistants, mechanical and electrical engineers.

[Here insert selected paras from Forms Nos. 43 & 44.]

FORM 46.

Newspaper, Magazine, &c. Company.

1. To carry on business as proprietors and publishers of newspapers, magazines, periodicals, journals, books and other literary works and undertakings.

2. To carry on all or any of the businesses of printers, stationers, lithographers, type-founders, stereo-typers, electro-typers, photographic printers, photo-lithographers, chromo-lithographers, engravers, die-sinkers, book-binders, designers, draughtsmen, paper and ink manufacturers, book-sellers, publishers, advertising agents, and dealers in or manufacturers of any other articles or things of a character similar or analogous to the foregoing or any of them or connected therewith.

3. To undertake and transact all kinds of agency or business which may be conveniently carried on along with any of the above businesses.

4. To provide for and furnish or secure to any members or customers of the Company, or to any subscribers to or purchasers of any publication of the Company, or of any coupons or tickets issued with any publications of the Company any conveniences, advantages, benefits or special privileges which may seem expedient, and either gratuitously or otherwise.

FORM 47.

Patent Medicines.

1. To carry on the manufacture and sale of patent medicines and preparations, and generally to carry on the business of manufacturers, buyers, and sellers of and dealers in all kinds of medicines and medical preparations and drugs whatsoever and obtain patents for them.

2. To carry on all or any of the businesses of chemists, druggists, chemical manufacturers, and importers and manufacturers of and dealers in pharmaceutical and medicinal preparations.

3. To manufacture, buy, sell, and deal in mineral waters, wines, cordials, liqueurs, soups, broths, and other restoratives or food, specially suitable or deemed to be suitable for invalids and convalescents.

4. To adopt such means of making known the products of the Company as may seem expedient, and in particular by advertising in the press, by circular, by purchase and exhibition of works of art or interest, by publication of books and periodicals, and by granting prizes, rewards, and donations.

FORM 48.

Petroleum and Mineral Oil Company.

1. To carry on the business of extracting, pumping, drawing, transporting and purifying and dealing in petroleum and other mineral oils.

2. To search for, inspect, examine and explore, work, take on lease, purchase or otherwise acquire lands and places which may seem to the Company capable of affording supply of mineral oil, and to establish, utilize and turn to account pumping stations, pipe-lines and other works and conveniences suitable for the purpose.

FORM 49.

Quarry Masters and Paviours.

1. To carry on business as quarry masters and stone merchants, and to buy, sell, get, work, shape, hew, carve, polish, crush, and prepare for market or use stone of all kinds.

2. To carry on business as road and pavement makers and repairers and manufacturers of and dealers in lime, cement, mortars, concrete and building materials of all kinds, and as builders and contractors for the execution of works and buildings of all kinds.

FORM 50.

Refreshment Rooms.

1. To carry on the business of refreshment rooms proprietors and refreshment caterers and contractors in all its respective branches.

2. To carry on the business of bakers, confectioners, butchers, milksellers, buttersellers, dairymen, grocers, poulterers, greengrocers, farmers, and ice merchants.

3. To manufacture, buy, sell, refine, prepare, grow, import, export and deal in provisions of all kinds, both wholesale and retail, and whether solid or liquid.

4. To establish and provide all kinds of conveniences and attractions for customers and others, and in particular reading, writing and smoking rooms, safe deposits, telephones, radios, clubs, stores, shops, lodgings, and lavatories &c.

FORM 51.

Saw Mills.

1. To carry on business as timber merchants, saw-mill proprietors, and timber growers, and to buy, sell, grow, prepare for market, manipulate, import, export, and deal in timber and wood of all kinds, and to manufacture and deal in articles of all kinds in the manufacture of which timber or wood is used, and to carry on business as general merchants, and to buy, clear, plant and work timber estates, and to carry on any other businesses which may seem to the Company capable of being conveniently carried on in connection with any of the above or calculated directly or indirectly to render profitable or enhance the value of the Company's property or rights for the time being.

FORM 52.

Shipping Company acquiring an existing Business.

1. To establish and maintain lines of steam and other ships and vessels between any ports which may seem to the Company expedient, and with a view thereto to enter into the agreement referred to in articles of the Company's articles of association and to carry the same into effect with or without modification, and generally to transport passengers, mails, troops, munitions of war, livestock, meats, corn and other produce, and treasure and merchandise of all kinds.

2. To purchase, take in exchange, or otherwise acquire and hold steam and other ships and vessels, or any shares or interests in ships or vessels, and also shares, stocks, and securities of any companies possessed of, or interested in any ships or vessels, and to maintain, repair, improve, alter, sell, exchange, or let out on hire or charter, or otherwise deal with and dispose of any ships, vessels, or shares, or securities aforesaid.

3. To carry on all or any of the business of importers, exporters, shipowners, managers of shipping property, freight contractors, carriers by land and sea, bargeowners, lightermen, motorboat owners, forwarding agents, ice merchants, refrigerating storekeepers, warehousemen, wharfingers and general merchants and traders.

4. To insure with any other company or person against losses, damages, risks and liabilities of all kinds which may affect the Company also to carry on the businesses of marine insurance and marine accident insurance in all their respective braches, and to effect re-insurance and counter re-insurance.

FORM 53.

Shoemakers.

1. To carry on business as boot and shoe manufactures, hide and leather merchants and manufacturers, leather dressers, tanners, dealers in hides, skins and other materials, manufactures of and dealers in all kinds of rubber and leather goods.

2. To carry on business as exporters, importers of and traders and dealers in hides, skins and leathers of all animals and all kinds of leather goods.

FORM 54.

Soap Manufacturers.

1. To carry on the business of soap manufacturers.

2. To buy, sell, manufacture, refine, prepare and deal in all kinds of oils and oleagenous and saponaceous substances and all kinds of unguents and ingredients.

3. To carry on business as pharmaceutical, manufacturing, and general chemists and druggists and manufacturers of and dealers in all kinds of toilet requisites, and manufacturers of all kinds of boxes and cases of card, wood, metal or otherwise, and printers, colour printers, publishers, stationers, candle makers, manufacturers of perfumes, collectors of perfume producing flowers, vegetation and substances.

FORM 55.

Spinning and Weaving Company.

1. To carry on all or any of the businesses of jute, flax and hemp spinners, cotton spinners and doublers, linen and cloth manufacturers, jute, flax, hemp, cotton and wool merchants, wool combers, worsted spinners, woolen spinners, yarn merchants, worsted stuff manufacturers, bleachers, dyers and manufacturers of bleaching and dyeing materials.

2. To purchase, comb, prepare, spin, dye and deal in jute, cotton, flax, hemp, wool, silk and any fibrous substances.

3. To weave and otherwise manufacture, buy and sell and deal in all kinds of cloth and other goods and fabrics, whether textile, felted, netted or looped.

4. To carry on the business of manufacturers of and dealers in water-proof materials and fabrics, paulines, American cloths, floor cloths and all kinds of imitation leathers and rubbers.

FORM 56.

Stationers.

1. To carry on the businesses of stationers, printers, lithographers, stereo-typers, electro-typers, photographic printers, photo-lithographers, engravers, die-sinkers, envelope manufacturers, book-binders, account book manufacturers, machine-rulers, numerical printers, paper makers, paper bag makers, box makers card board manufacturers, type founders, photographers, manufacturers and dealers in paper, parchment, ink, pencils, fountain pens, stamps, playing, visiting, railway, festive complementary and fancy cards and valentines, designers, draftsmen, ink manufacturers, advertising agents, booksellers, publishers, engineers, cabinet makers, and dealers in or manufacturers of any other articles or things of a character, similar or analogous to the foregoing, or any of them, or connected therewith.

FORM 57.

Stores and Provisions Company.

1. To carry on the business as importers and dealers in general stores and provisions in all its branches, in particular as importers of, and dealers in provisions, produces, drugs, chemicals and other articles and commodities of personal and household use and consumption.

2. To carry on the businesses of manufacturers, importers and wholesale and retail dealers of leather goods, household furniture, fittings and utensils, ironmongery, ornaments, stationery, fancy goods, perfumery, soap, bicycles, tricycles, motor cars, lorries and taxicabs.

3. To carry on the businesses of licensed victuallers, wine and spirit merchants, tobacconists, and dealers in mineral, aerated, and other liquors, farmers, dairymen, market gardeners, nurserymen and florists.

4. To buy, sell, manufacture, repair, alter and exchange, let on hire, export, and deal in all kinds of articles and things which may be required for the purposes of any of the said businesses, or commonly supplied or dealt in by persons engaged in any such businesses which may seem capable of being profitably dealt with in connection with any of the said businesses.

FORM 58.

Surgical Instrument Makers.

1. To carry on the business of manufacturers of and dealers in anatomical, orthopaedic, and surgical appliances of all kinds.

2. To carry on the businesses of artificial eye and limb makers, corset makers, stay makers, bandage makers, crutch, chair and stretcher makers, carriage makers, ambulance

makers, chemists, druggists, and providers of all requisites for hospitals, patients and invalids.

FORM 59.

Tea Planters.

1. To cultivate tea, coffee, cinchona, rubber and other produce, and to carry on the business of tea planters in all its branches, to carry on and work the business of cultivators, winners and buyers of every kind of vegetable, mineral, or other produce of the soil, to prepare, manufacture and render marketable any such produce, and to sell, dispose of and deal in any such produce, either in its prepared, manufactured or raw state, and either by wholesale or retail.

FORM 60.

Theatre Company.

1. To carry on the business of theatre proprietors and managers and in particular to provide for the production, representation, and performance of operas, stage plays, burlesques, ballets, pantomimes, spectacular pieces, concerts, and other musical and dramatic performances and entertainments.

2. To construct theatres and other buildings and works convenient for the purposes thereof, and to manage, maintain and carry on the said theatres and other buildings when constructed and to let out in whole or in parts or otherwise dispose of them when they are not required for the immediate purposes of the Company.

3. To carry on the business of restaurant keepers, wine and spirit merchants, licensed victuallers, theatrical agents, box office keepers, concert room proprietors, hotel keepers, dramatic and musical publishers and printers, and any other business which can be conveniently carried on in connection with any of those objects as may seem calculated to render profitable any of the Company's property and rights for the time being.

4. To enter into agreements with authors or other persons for the dramatic or other rights of operas, plays, burlesques, ballets, pantomimes, spectacular pieces, musical compositions and other dramatic and musical performances and entertainments, or for the representation thereof in India and elsewhere.

FORM 61.

Tobacconist Company.

1. To carry on the business of manufacturers of and dealers in tobacco, cigars cigarettes, match lights, pipes and any other articles required by or which may be convenient to smokers, and of snuff grinders and snuff merchants and box merchants and to deal in any other articles or things commonly dealt in by tobacconists.

FORM 62.

Waterworks Company.

1. To carry on the business of a waterworks company in all its branches.

2. To supply any town in   and its neighbourhood with water, filtered, unfiltered or both.

3. To sink wells, tube wells and shafts, and to make, build and construct, lay down and maintain, tanks, reservoirs, waterworks, cisterns, culverts, filter-beds, main and other pipes, and appliances, and to execute and do all other works and things necessary or convenient for obtaining, storing, selling, delivering, measuring and distributing water, or otherwise for the purposes of the Company.

FORM 63.

ARTICLES OF ASSOCIATION.

Articles of Association of a Company (see Form 9) intended to be managed by Managing Agents, which excludes Table A.

THE INDIAN COMPANIES ACTS.

COMPANY LIMITED BY SHARES.

ARTICLES OF ASSOCIATION

of

LIMITED.

1. PRELIMINARY.

1. The Regulations contained in Table A in the First Schedule to the Indian Companies Act, 1913, with the exception of Regulations 56, 66, 71, 78 to 82, 95, 97, 105 and 112 to 116 thereof shall not apply but instead thereof the following shall be the Regulations of the Company.

2. In these presents unless there be something in the subject or context inconsistent therewith :—

Words signifying the singular number only, shall include the plural and *vice versa.*

Words signifying males only, shall extend to and include females.

Words signifying persons, shall apply *mutatis mutandis* to corporations.

"The Directors" means the Directors for the time being.

The word "month" shall mean "calendar month" according to the English style.

"The Office" means the Registered Office for the time being of the Company.

"The Register" means the Register of Members to be kept pursuant to section 31 of the Indian Companies Act, 1913.

"In writing" or "written" includes printing, lithography and type-writing and other modes of representing words or reproducing words in a visible form.

"Dividend" includes bonus.

3. The Company shall forthwith adopt the following agreement, namely, an agreement dated the 19 and made between of the first part and of the second part being the agreement referred to in Clause of the Company's Memorandum of Association and the Directors shall carry the same into effect with full power nevertheless at any time and from time to time either before or after execution thereof to agree to any modification thereof subject to the provisions of section 99 of the Indian Companies Act, 1913.

The basis on which the Company is established is that the Company shall acquire the property comprised in the said agreement on the terms therein set out subject to such modifications (if any) as aforesaid and that the firm of & Company whose members are interested in the said agreement as promoters are to be the first Managing Agents of the Company and as such to have the right of appointing a Director of the Company and accordingly it shall be no objection to the said agreement that the members of the said firm or any of them as promoters, directors or managing agents stand in a fiduciary position towards the Company or that the Board of Directors and the Managing Agents are not in the circumstances independent of the promoter, nor shall any promoter or director be liable to account to the Company for any profit or benefit derived by him under the said agreement by reason of any promoters or directors of the Company being vendors to the Company, or interested in the firm of Managing Agents to the Company or by reason of the purchase consideration having been fixed by the vendors without any independent valuation having been made and every member of the Company, present and future, is to be deemed to join the Company on this basis, and to have notice of the provisions of the said agreement and to have assented to all the terms thereof.

4. The business of the Company shall include the several objects expressed in the Memorandum of Association or any of them.

5. The Company shall have its Head office at   in the Province of   or at such other place as the Managing Agents with the approval of the Directors may from time to time determine.

6. The Managing Agents shall not employ the funds of the company, or any part thereof in the purchase of, or in lending upon the security of shares of the Company.

II. CAPITAL.

(1) Shares.

7. The initial capital of the Company is Rs.   divided into   ordinary shares of Rs.   each,   preference shares of Rs.   each,   redeemable preference shares of Rs.   each and   deferred shares of Rs.   each.

8. The shares shall be under the control of the Managing Agents who may allot or otherwise dispose of the same to such persons, on such terms and conditions and at such times as they think fit and with full power to give to any person, the right to call for the allotment of any shares either at par or at a premium, for such time and for such consideration as the Managing Agents may see fit.

9. In addition to the payment of any reasonable sums as brokerage, the Company may, at any time, pay a commission to any person for subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the Company, or procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any shares in the Company but so that (if the commission shall be paid or payable out of capital) the commission shall not exceed 2½ per cent. on the shares in each case subscribed, or agreed to be subscribed, and that (in case of shares offered to the public for subscription) the actual rate per cent. of the commission paid, or agreed to be paid, shall be disclosed in the prospectus, and in the case of shares not offered to the public for subscription, the said actual rate per cent. shall be disclosed in the statement in lieu of prospectus, or in a statement signed in like manner as a statement in lieu of prospectus, and filed with the Registrar of Companies, and where a circular or notice, not being a prospectus inviting subscription for the shares, is issued, also disclosed in that circular of notice.

10. The joint-holders of a share, shall be severally as well as jointly liable for the payment of all instalments and calls due in respect of such shares.

11. The Company may make arrangements on the issue of shares, for a difference between the holders of such shares in the amount of calls to be paid, and the time of payment of such calls.

12. Every shareholder shall name to the Company a place in British India to be registered as his address, and such address shall for all purposes be deemed his place of residence.

13. The Company shall not, save as ordered by some Court of competent jurisdiction, be bound to recognize any benami, equitable, contingent, future, or partial interest in any share, or any other right in respect of a share, except an absolute right thereto in the person or persons from time to time registered as the holder or holders thereof.

14. Shares may be registered in the name of the Managing Agents' firm, (but no other) or of any Limited Company, but not in the name of a minor, nor shall more than four persons be registered as joint-holders of any share.

(2) Certificates.

15. The certificates of title to shares shall be issued under the seal of the Company, and shall be signed by the Managing Agents and by one Director.

16. If any certificate be worn out, defaced, destroyed, or lost, a new one or new ones may be issued in lieu thereof, on production to the Managing Agents of evidence satisfactory to them of its being worn out, defaced, destroyed, or lost, or in default of such evidence, on such indemnity being given as the Managing Agents may think sufficient.

17. A fee of Re.   shall be charged in respect of every renewal certificate.

18. The certificates in respect of shares registered in the names of two or more persons shall be delivered to the person first named in the register.

(3) Calls of Shares.

19. The Managing Agents, subject to the approval of the Directors, may from time to time, subject to any terms on which any shares may have been issued, make such calls as they think fit upon the shareholders in respect of all money unpaid on the shares held

by them respectively, and each member shall pay the amount of every call so made on him, to the persons, and at the times and places appointed by the Managing Agents. A call may be made payable by instalment.

20. A call shall be deemed to have been made, at the time when the resolution of the Directors approving such call was passed.

21. Fourteen clear days' notice at least of any call shall be given specifying the time and place of payment, and to whom such call shall be paid.

22. If the sum payable in respect of any call or instalment be not paid before or on the day appointed for payment thereof, the holder for the time being of the share, in respect of which such call or instalment shall be due, shall be liable to pay interest for the same at such rate as the Managing Agents may determine, not exceeding per cent. per annum, from the day appointed for payment thereof to the time of actual payment.

23. The Managing Agents may, subject to the approval of the Directors, receive from any shareholder, willing to advance the same, all or any part of the moneys due upon the share or shares held by him beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof, as from time to time exceeds the amount of the calls then made upon the share or shares, in respect of which such advance has been made, the Company may pay interest at such rate as the shareholder paying such sum in advance and the Managing Agents agree upon. Money so paid in excess of the amount of calls shall not rank for dividend.

(4) Forfeiture, Surrender and Lien.

24. If any Member fail to pay any call, or instalment, on or before the day appointed for payment thereof, the Managing Agents may, with the approval of the Directors at any time thereafter during such time as the call or instalment remains unpaid, serve notice on him to pay the same together with any interest that may have accrued, and any expenses that may have been incurred by the company by reason of such non-payment, and stating that in the event of non-payment on or before some day to be named in the notice (such day not being less than fourteen days from the date of such notice) and at some place (either the Office or a Bank) named in such notice, the shares in respect of which the call was made or instalment is payable, will be liable to be forfeited.

25. If the requisitions of such notice are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls or instalments, interest and expenses due in respect thereof, be forfeited by the Managing Agents with the approval of the Directors, and the forfeiture shall be recorded in the Directors' Minute Book ; and the holder thereof shall thereupon cease to have any interest therein, and his name shall be removed from the register as such holder, and thereupon notice shall be given to him of such removal, and an entry of the forfeiture with the date thereof shall forthwith be made in the register. Such forfeiture shall include all dividends declared in respect of the forfeited shares, and not actually paid before the forfeiture.

26. Any member whose shares shall be so forfeited shall, notwithstanding the forfeiture, be liable to pay and shall forthwith pay to the Company all calls or instalments, interest, and expenses owing upon, or in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture until payment at the rate of 12% per annum, and the Managing Agents shall enforce the payment thereof if they think fit.

27. Any share so forfeited shall be deemed to be the property of the Company and the Managing Agents, subject to the approval of the Directors, may sell, re-allot, or otherwise dispose of the same in such manner as they think fit.

28. The Managing Agents, subject to the approval of the Directors, may at any time before any share so forfeited shall have been sold, re-alloted, or otherwise diposed of, annul the forfeiture thereof upon such conditions as they think fit.

29. The Company shall have a first and paramount lien upon all the shares registered in the name of each member (whether solely or jointly with others) for his debts, liabilities, and engagements, whether solely or jointly with any other person to or with the Company whether the period for the payment, fulfilment, or discharge thereof shall have actually arrived or not, and such lien shall extend to all dividends from time to time declared in respect of such shares. Unless otherwise agreed the registration of a transfer of shares shall operate as a waiver of the Company's lien (if any) on such shares.

30. The Company shall be entitled to give effect to such lien by sale, or forfeiture and re-issue of the shares subject thereto, or by retaining all dividends and profits in respect thereof, or by any combination of the said means, but no sale or forfeiture shall be made until such period as aforesaid shall have arrived, and until notice in writing of the intention to sell or forfeit shall have been served on such member, his executors or administrators, and default shall have been made by him or them in the payment, fulfilment, or discharge of such debts, liabilities or engagements for seven days after such notice.

31. Upon any sale after forfeiture, or for enforcing a lien, in purported exercise of the powers hereinbefore given, the Managing Agents may cause the purchaser's name to be entered in the register in respect of the shares sold, and the purchaser shall not be bound to see to the regularity of the proceedings, or to the application of the purchase money, and after his name has been entered in the register in respect of such shares, the validity of the sale shall not be impeached by any person.

(5) Transfer and Transmission of Shares.

32. The transfer of shares shall be effected by an instrument in writing in the usual common form, modified so as to suit the circumstances of the parties, and shall be executed both by the transferor and the transferee, whose execution shall be attested by at least one witness, who shall add his address and occupation, and the transferor shall be deemed to remain the holder of such shares, until the name of the transferee shall have been entered in the register in respect thereof.

33. Every instrument of transfer shall be deposited with the Company, and no transfer shall be registered until such instrument shall be so deposited, together with the certificate of the shares to be transferred, and together with any other evidence the Managing Agents may require to prove the title of the transferor, or his right to transfer the shares, and a fee of Re. shall be payble for the registration of any transfer, and the instrument of transfer shall after registration be kept by the Company; but all instruments of transfer which the Managing Agents may decline to register shall be returned to the person depositing the same.

34. The Managing Agents, subject to the approval of the Directors, may without assigning any reason, decline to register any transfer of shares upon which the Company has a lien, or of shares which are not fully paid up.

34A. If registration of the transfer of a share or debenture of the Company is refused, the managing Agents shall, within two months from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the refusal.

35. The Managing Agents may, on giving seven day's previous notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole forty-five days in each year but not exceeding thirty days at a time.

36. The executors or administrators or holders of succession certificate of a deceased member shall be the only persons recognized by the Company as having any title to the shares registered in the name of such member.

37. Any committee or guardian of a lunatic, or infant member, or any person becoming entitled to, or to transfer shares, in consequence of the death, bankruptcy or insolvency of any member, or otherwise than by transfer may, with the consent of the Managing Agents (which they shall not be under any obligation to give), be registered as a member upon such evidence, that he sustains the character in respect of which he proposes to act under this clause, or of his title being produced as may from time to time be required by the Managing Agents, or such person, instead of being registered himself, may, subject to the regulations as to transfer herein-before contained, transfer such shares.

(6) Increase and Reduction of Capital.

38. The Company in General Meeting may, from time to time, increase the capital by the creation of new shares of such amount as may be deemed expedient. The new capital may be divided into preference shares, redeemable preference shares, ordinary shares or deferred shares and may be issued upon such terms and conditions, and with such rights and privileges annexed thereto, as the General Meeting resolving upon the creation thereof shall direct, and if no direction be given as the Managing Agents, subject to the approval of the Directors, shall determine, and in particular such shares may be issued with a preferential or qualified right to dividends and in the distribution of assets of the Company, and with a special or without any right of voting.

39. Subject to any direction to the contrary that may be given by the meeting, which sanctioned the increase of the capital, all new shares shall be disposed of by the Managing Agents in such manner as they may deem to be most beneficial to the Company.

40. Any capital raised by the creation of new shares, shall be considered as part of the original capital in all respects, so far as may be, and shall be subject to the foregoing provisions, with reference to the payment of calls and instalments, transfer, and transmission, forfeiture, lien and surrender, unless it may be otherwise resolved by the General Meeting sanctioning the increase.

41. The Company may, subject to confirmation by the Court from time to time, by Special Resolution, reduce its capital by paying off capital or cancelling capital which has been lost, or is unrepresented by available assets, or reducing the liability on the shares, or otherwise as may seem expedient, and capital may be paid off upon the footing that it may be called up again or otherwise.

42. Notwithstanding any rights conferred on members the Company shall have the following powers:—(a) The Company may from time to time or at any time by Resolution passed in General Meeting capitalize any sum or sums forming part of any undivided profits of the Company, whether standing to the credit of any reserve fund or not, and direct the appropriation of the sum or sums so capitalized to and amongst the members of the Company who would have been entitled thereto if the same were distributed by way of dividend, and provide for the distribution of such capitalized profits by way of capital distribution by directing that the same shall be used to pay up unissued shares of the Company of any denomination or denominations on behalf of such members, and that the shares so paid up shall be distributed as capital amongst such members in proportion to the amounts which would have been received by them if such profits had been distributed by way of dividend as aforesaid and in satisfaction of their shares and interests in the sum or sums so capitalized as aforesaid: (b) Any General Meeting declaring a dividend or bonus may direct that such dividend or bonus be paid wholly or in part by the distribution of specific assets, and in particular of paid up shares or securities of the Company or of paid up shares, stock or securities of any other Company or in any one or more of such ways, and such resolution shall be effective and effect shall be given thereto by the Directors accordingly: (c) Where any difficulty arises in regard to any distribution to be made as aforesaid, the Directors may settle the same as they may think expedient and in particular may issue fractional certificates, fix the value for distribution of any such specific assets or any part thereof and may, in order to adjust the rights of all parties, determine that cash payment shall be made to any member upon the footing of the value so fixed and may vest any such specific assets in Trustees upon such trusts for the persons entitled to share in the distribution or any of them as may seem expedient to the Directors: (d) Where requisite, the Directors may appoint any person to sign a contract for allotment and acceptance on behalf of the persons entitled to share in any such distribution as aforesaid or any of them and such appointment shall constitute the person so appointed the agent of the persons entitled for the purpose of executing the contract.

(7) Consolidation and Subdivision of Shares.

43. The Company may sub-divide or consolidate its shares or any of them.

44. The Resolution whereby any share is subdivided, if confirmed by the Court, and by a resolution passed by the class of shareholders whose rights will be affected thereby, passed in manner prescribed in Article 45 hereof may determine that as between the holders of the shares resulting from such subdivision, one or more of such shares shall have some preference or special advantage as regards dividend, capital, voting or otherwise over, or as compared with, the other or others.

(8) Modification of Rights.

45. All or any of the rights and privileges attached to each of the clauses of shares into which the capital may at any time be divided, whether by reason of the issue of preference shares or otherwise, may be varied, modified, commuted, affected, or abrogated by agreement between the Company and any person purporting to act on behalf of the holders of such class of shares, confirmed by an Extraordinary Resolution, passed at a separate General Meeting of the holders of shares of that class, and all the provisions hereinafter contained as to General Meetings shall, *mutatis mutandis*, apply to every such meeting but so that the quorum thereof shall be members holding or representing by proxy, or power-of-attorney, one fifth of the nomial amount of the issued shares of the class.

III. BORROWING POWERS.

46. The Managing Agents may from tsme to time, with the approval of the Directors, borrow from the members or other persons, and may themselves lend any sum or sums of moneys for the purposes of the Company.

47. The Managing Agents may with such approval as aforesaid raise and secure the payment of such money in such manner, and upon such terms and conditions in all respects as they think fit, and in particular by the issue of debentures or bonds of the Company, or by the creation of debenture stock, or by making, drawing, accepting, or endorsing on behalf of the Company any promissory notes, or bills of exchange, or giving or issuing any other security of the Company, or by mortgage or charge of all or any part of the property of the Company both present and future, including its uncalled capital for the time being, and the Managing Agents, with such approval as aforesaid, may on behalf of the Company guarantee the whole or any part of any loans or debts incurred by the Company with power for them to secure the guarantors against liability in respect of such loans, by means of a mortgage or charge of the Company's property, movable or immovable or otherwise. Whenever any uncalled capital of the Company is included in or charged by any mortgage or other security, such mortgage or security may include an authority to the person in whose favour the same is executed, or any other persons in trust for him, to make calls on the members in respect of such uncalled capital, and the provisions herein-before contained in regard to calls shall, *mutatis mutandis*, apply to calls made under such authority, and such authority may be made exercisable either conditionally or unconditionally, and either presently or contingently and either to the exclusion of the Managing Agents' powers or otherwise, and shall be assignable if expressed so to be.

48. Any debentures or other securities may be issued at a discount, premium, or otherwise, and with any special privileges as to redemption, surrender, drawing, and otherwise, and may be so framed that the same shall be assignable free from any equities between the Company and the original, or any intermediate holders.

IV. RESERVE AND DEPRECIATION FUNDS.

49. The Managing Agents, with the sanction of the Directors, may from time to time set apart any and such portion of the profits of the Company as they think fit, as a reserve fund applicable, at their discretion with the like sanction, for the liquidation of any debentures, debts or other liabilities of the Company, for equalization of dividends, or for any other purposes of the Company, with full power to employ the assets constituting the reserve fund in the business of the company, and that without being bound to keep the same separate from the other assets.

50. The Managing Agents, with the sanction of the Directors, may from time to time set apart any and such portion of the profits of the Company, as they think fit, as a depreciation fund applicable at the discretion of the Managing Agents with the like sanction, for rebuilding, restoring, replacing, or altering any part of the buildings, work, plant, machinery, or other property of the Company destroyed or damaged by fire, flood, storm, tempest, accident, riot, wear and tear, or other means, or for repairing, altering and keeping in good condition the property of the Company, or for extending and enlarging the buildings, machinary, and property of the Company, with full power to employ the assets constituting such depreciation fund in the business of the Company, and that without being bound to keep the same separate from the other assets.

51. All moneys carried to the reserve fund and depreciation fund respectively shall nevertheless remain and be profits of the Company applicable, subject to due provision being made for actual loss or depreciation, for the payment of dividends, and such moneys and all the other moneys of the Company, not immediately required for the purposes of the Company, may be invested by the Managing Agents in or upon such investments or securities, as they may, subject to the approval of the Directors select, or may be used as working capital, or may be kept at any Bank on deposit, or otherwise as the Managing Agents with such approval as aforesaid may, from time to time, think proper.

V. MEETINGS.

(1) Convening Meetings.

52. The first or Statutory General Meeting of the Company shall be held at such time within a period of not less than one month nor more than six months from the date upon which the Company becomes entitled to commence business, and at such place as the Managing Agents may determine. Subsequent General Meetings of the Company shall be held within eighteen months from the date of its incorporation and

thereafter once at least in every year at such time and place as may be prescribed by the Company in General Meeting, or if no time or place is so prescribed, at such time and place as the Managing Agents may from time to time appoint. The above-mentioned General Meetings shall be called Ordinary Meetings ; all other meetings shall be called Extraordinary Meetings.

53. An Extraordinary General Meeting may at any time be called by the Managing Agents and shall be so called upon the request of the Directors, or upon a requisition of shareholders as provided by section 78 of the Indian Companies Act, 1913.

54. The Managing Agents calling any General Meeting and the shareholders calling any Extraordinary General Meeting other than a meeting for the passing of a special resolution shall respectively give at least fourteen clear days' notice with a statement of the business to be transacted at the meeting specifying the time and place of the meeting. Where it is proposed to pass a Special Resolution, at least twenty-one days' notice must be given specifying the intention to propose the resolution as a special resolution.

55. The non-receipt by a shareholder of notice of a General Meeting shall not affect the validity of the proceedings of the meeting.

56. It shall not be requisite in any event to give notice of a General Meeting or other meeting to any shareholder who has not supplied to the Company a registered address in India.

(2) Proceedings at General Meetings.

57. The business of an Ordinary Meeting shall be to receive and consider the profit and loss account and the balance sheet, the reports of Directors and the Managing Agents and Auditors, to elect Directors and other officers in place of those retiring, to declare dividends, and to transact any other business which under these presents ought to be transacted at an Ordinary Meeting, and any business which is brought under consideration by the report of Directors and the Managing Agents issued with the notice convening the meeting. All other business transacted at an Ordinary meeting, and all business transacted at an Extraordinary Meeting shall be deemed special.

58. Three shareholders entitled to vote and present in person shall be a quorum for a General Meeting.

59. No business except the choice, when necessary, of a Chairman or the adjournment of the meeting shall be transacted or discussed at a General Meeting while the chair is vacant.

60. If within half an hour after the time appointed for the holding of a General Meeting a quorum be not present the meeting, if convened on the requisition of shareholders, shall be dissolved and in every other case, shall stand adjourned to the same day in the next week at the same time and place as was appointed for holding the General Meeting, and if at such adjourned meeting the quorum be not present, those members who are present and entitled to vote shall be a quorum whatever their number and the amount of shares held by them, and may transact the business for which the meeting was called.

61. The Chairman, with the consent of the meeting, may adjourn any General Meeting from time to time and place to place, but no business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place, and which might have been transacted at that meeting.

62. In default of or in the absence of a Chairman appointed by the Board of Directors, at every General Meeting a Director chosen by the shareholders present and entitled to vote shall take the chair.

63. Except where otherwise provided by the Indian Companies Act, 1913, or by these presents, every question to be decided by any General Meeting shall, in the first instance, be decided by a show of hands. In case of an equality of votes, the Chairman shall both on a show of hands and at a poll have a casting vote, in addition to the vote or votes to which he may be entitled as a Member.

64. At any General Meeting five members present in person or by proxy, or the Chairman of the meeting, or any member or members holding not less than one-tenth of the issued share capital which carries voting rights, shall be entitled to demand a poll. Unless a poll is demanded, as aforesaid, before or on the declaration of the result of the show of hands, a declaration of the Chairman, that a resolution has been carried or carried by a particular majority or lost or not carried by a particular majority, and an

entry to that effect in the minutes of the proceedings of the meeting, shall be sufficient evidence of the fact so declared, without proof of the number or proportion of the votes given for or against the resolution.

65. If a poll is demanded as aforesaid, it shall be taken in such manner and at such time and place, as the Chairman of the meeting directs, and either at once or after an interval or adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.

66. Minutes shall be made in books, provided for the purpose, of all resolutions and proceedings at General Meetings, and any such minutes, if signed by the Chairman of the meeting to which it relates, or by the Chairman of the next subsequent General Meeting, shall be receivable as evidence of the facts therein stated without further proof.

67. Any poll duly demanded on the election of a Chairman of a meeting or on any question of adjournment, shall be taken at the meeting and without adjournment.

68. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the business on which a poll has been demanded.

(3) Votes of Members.

69. On a show of hands every member present in person shall have one vote, and at a poll every member present in person, or by proxy, or attorney, shall have one vote for every share held by him.

70. If two or more persons are jointly registered as holders of any one share, any of such persons may vote at any meeting, either personally, or by proxy, or attorney, as if he were solely entitled thereto, and if more than one of such joint-holders be present at any meeting personally or by proxy, or attorney, that one of such persons so present whose name stands first in the register in respect of such share, shall alone be entitled to vote in respect of the same. Several executors or administrators of a deceased member in whose names any share stands, shall for the purpose of this clause, be deemed joint-holders.

71. Any guardian, or other person entitled under the transmission clause (Article 37 hereof) to transfer any shares, may vote at any General Meeting in respect thereof, as if he was the registered holder of such shares, provided that at least 72 hours before the holding of the meeting he shall satisfy the Managing Agents of his right to act in that capacity, unless the managing Agents shall have previously admitted his right to vote at such meeting in respect thereof.

72. No member shall be entitled to be present, or to vote at any General Meeting, either personally, or by proxy, or attorney, or as a proxy or attorney for any other member, or be reckoned in a quorum, whilst any call or other sum shall be due and payable to the Company in respect of any of the shares of such member.

73. Votes may be given either personally or by proxy, or by agent acting under a duly executed Power-of-Attorney.

74. The instrument appointing a proxy shall be either printed or written, or partly printed and partly written, and shall be signed by the appointor, or his attorney, or if such appointor be a corporation. it shall be under its common seal. No person shall be appointed a proxy who is not a member of the Company and qualified to vote, but an attorney under a power may attend and vote at meetings without being a shareholder and where a corporation is the registered holder of shares of the Company, it may, by resolution of its Directors, appoint any of its officials or any other person to act as its representative at any meeting of this Company, and the person so authorised, shall be entitled to exercise the same powers on behalf of the Company which he represents, as if he were an individual shareholder of this Company.

75. The instrument appointing a proxy, and every Power-of-Attorney or other authority (if any), under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the Company, not less than 72 hours before the time for holding the meeting, at which the person named in such instrument proposes to vote and in default the instrument of proxy shall not be treated as valid.

76. A vote given in accordance with the terms of an instrument of proxy or a Power-of-Attorney shall be valid, notwithstanding the previous death of the principal, or revocation of the proxy or Power-of-Attorney, or transfer of the share in respect of which the vote is given, unless an intimation in writing of the death, revocation, or transfer, shall have been received at the office of the Company before the meeting.

VI. MANAGEMENT.

(1) Managing Agents.

77. The Managing Agents may carry on the business of the Company, subject to the supervision and control of the Board of Directors. At the date of the adoption of these Articles, the Managing Agents are the persons at present carrying on business in under the style or firm of Messrs. & Company, and they shall continue and be the Managing Agents of the Company (unless they shall voluntarily resign that office) for the term of twenty years from the date of incorporation of the Company.

78. The remuneration of the said Managing Agents shall be, a commission of not less than % on the net yearly profits of the Company within the meaning of s. 87C (3) of the Indian Companies Act, 1913 ; but in the case of absence or inadequency of profits in any year the Managing Agent shall get Rs.........as minimum payment for that year together with an office allowance of Rs. per month.

79. In consideration of the said remuneration, the said Managing Agents shall provide a suitable office for the Company in Calcutta, but shall be entitled to charge and be paid for all actual postage, telegrams, stationary, printing, legal expenses, advertisements, travelling and the like expenses.

80. The said Managing Agents may, subject to the supervision and control of the Directors, have the engagement and dismissal of Managers, Engineers, Clerks, and Assistants, and the general direction, management and superintendence of the business of the Company, with full power to do all acts, matters, and things deemed necessary, proper, or expedient for carrying on the business and concerns of the Company, and to make and sign all such contracts, and to draw, accept, indorse, and negotiate on behalf of the Company, all such Bills of Exchange, Promissory Notes, Hoondies, Cheques, Drafts, Government Promissory Notes, and other Government Paper, and other instruments as shall be necessary, proper, or expedient for the carrying on the business of the Company, and to exercise all the powers, authorities and discretion of the Company, except only such of them as by the Companies Acts for the time being in force, or these presents are expressly directed to be exercised by the Board of Directors, or by the shareholders in General Meeting. All moneys belonging to the company shall be paid to such Bankers as the Directors shall deem expedient, and all receipts for money paid to the Company shall be signed by the Managing Agents, whose receipts shall be an effectual discharge for the moneys therein stated to have been received. The said Managing Agents may with the sanction of the Board of Directors delegate all or any of their powers to such Managers, Agents, or other persons, as they may see fit, and shall have power to grant to such Managers, Agents, or other delegates, such Powers-of-Attorney as the said Managing Agents may, subject to the approval of the Board of Directors, deem expedient and such powers at pleasure to revoke. The said Managing Agents shall duly make, keep, and file, or cause to be made, kept, and filed, all such registers, returns, statements, and accounts as under the provisions of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, are required to be made, kept, and filed by the Company, or its officers, and the Managing Agents shall be liable to the Directors for any loss or damages caused to them by any omission or negligence in this respect on the part of the Managing Agents.

81. The provisions of the last four preceding Articles shall be embodied in an Agreement between the Company and the said firm of Messrs. & Company, and the Directors shall cause the Common Seal of the Company to be affixed to such Agreement and shall carry the same into effect.

82. Subsequent Managing Agents and their remuneration shall be appointed and determined by the company in General Meeting, and the Company may at any time or times after the first Managing Agents abovenamed cease to be the Managing Agents, appoint a Managing Director instead of Managing Agents. Until otherwise determined by the company in General Meeting such Managiog Agents or Managing Director for the time being shall have the like powers and perform the like duties as are conferred and imposed by these Articles upon the first Managin Agents.

(2) Directors.

83. The business of the Company shall be managed by the Directors who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the company as are not, by the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, or by these articles required to be exercised by the Company in general meeting, subject nevertheless to such regula-

tions, not inconsistent with the aforesaid provisions, as may be prescribed by the Company in general meeting; but no such regulations shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made. The Directors shall be able, subject to the aforesaid provisions, to delegate any of their powers to the Managing Agents, a Managing Director or a Committee of Directors.

83A. Until otherwise determined by a General Meeting the number of the Directors shall not be less than three nor more than ten.

84. The Directors shall have power from time to time, and at any time, to appoint any other persons to be Directors, but so that the total number of Directors shall not at any time exceed the maximum number fixed as above. The first Directors of the Company are :—

85. Until otherwise determined by a General Meeting, the qualification of every Director shall be his holding not less than shares of the nominal value of Rs. either in his own name or jointly with any other person or persons, whether beneficially, or as a Trustee for any Company or person or otherwise howsoever. A first Director may act before acquiring his qualification, but shall in any case acquire the same within two months from his appointment; and unless he shall do so he shall be deemed to have agreed to take the said shares from the Company, and the same shall be forthwith allotted to him accordingly. Shares held in the name of the Managing Agents' firm shall qualify any Member of such firm to act as a Director.

86. Such one of the members of the firm of Messrs. , so long as that firm are the Managing Agents of the Company, as shall from time to time be appointed a Director by that firm, or the Managing Director appointed under clause 82 hereof shall not be subject to retirement by rotation, and shall not be taken into account in determining the rotation of retirement of Directors.

87. Until otherwise determined by a General Meeting each Director, including the member of the Managing Agents' firm who is a Director, shall receive out of the funds of the Company by way of remuneration the sum of Rs. for each meeting attended by him.

The Directors shall also receive a commission of two and a half per cent. on the net yearly profits of the Company (after deducting interest on debentures or other moneys borrowed but before placing anything to reserve, depreciation or other special account and before deducting the commission payable to the Managing Agents) and such commission shall be divided among the Directors equally or as they may determine.

88. If any Director, being willing, shall be called upon to perform extra services, or to make any special exertions in going, or residing away from for any of the purposes of the Company, or giving any special attendance to the business of the Company, the Company may remunerate the Director so doing either by a fixed sum, or by a percentage on profits or otherwise, as may be determined by the Directors, and such remuneration may be either in addition to or in substitution for his share in the remuneration above provided for the Directors.

89. At the first Ordinary General Meeting of the Company, the whole of the Directors shall retire from office, and at the Ordinary Meeting in every subsequent year, one-third of the Directors for the time being or, if their number is not three or a multiple of three then the number nearest to one-third, shall retire from office.

90. On every retirement of a Director in rotation, the meeting at which he retires may, subject to any resolution reducing the number of Directors, elect a qualified shareholder to be a Director in his stead, and without notice in that behalf may fill up any other vacancies.

90A. If at any meeting at which an election of Directors ought to take place, the places of the vacating Directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating Directors or such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

91. The Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

92. Retiring Directors shall be eligible for re-election.

93. The Company in General Meeting may from time to time increase or reduce the number of Directors, and may alter their quailfication and remuneration, and may also determine in what rotation such increased or reduced number is to go out of office.

94. The Company may by Extraordinary Resolution remove any Director, other than the Director appointed under article 86 hereof, before the expiration of his period of office and appoint another qualified person in his stead; the person so appointed shall hold office, during such time only as the Director in whose place he is appointed would have held the same, if he had not been removed.

95. If any casual vacancy occur in the Board of Directors, it may be filled up by the Directors. Any person so chosen shall retain his office so long only as the vacating Director would have retained the same if no vacancy had occurred. The continuing Directors may act notwithstanding any vacancy in their body, but so that if the number falls below the minimum above fixed, the Directors shall not, except for the purpose of filling vacancies, act so long as the number is below the minimum.

96. A shareholder, not being a retiring Director, shall not be eligible to be elected as a Director at any General Meeting, unless he or some other member intending to propose him, has at least seven clear days before the meeting left, at the office of the Company, a notice in writing duly signed, signifying his candidature for the office or the intention of such member to propose him.

97. Every Director shall vacate his office on the happening of any of the events following that is to say :—

(1) On his failing to obtain his qualifying shares within two months of the date of his appointment, or at any time thereafter on his ceasing to hold his qualifying number of shares.

(2) On his failing to pay calls made on him in respect of shares held by him within six months of such calls being made.

(3) On his becoming bankrupt, or insolvent, or suspending payment, or compounding with his creditors.

(4) On his being found a lunatic, or on his becoming of unsound mind.

(5) If he or any firm of which he is a partner or any private company of which he is a director without the sanction of the company in General Meeting accepts or holds any office of profit under the company other than that of a managing director or manager or legal or technical adviser or a banker.

(6) On his resigning office by notice in writing to the Company.

(7) On his being requested in writing by all his Co-Directors to resign; but this shall not apply to any Director appointed under Article 86 hereof.

(8) If he absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months whichever is the longer without leave of absence from the Board of Directors.

(9) If he or any firm of which he is a partner or any private company of which he is a director accepts a loan or guarantee from the company in contravention of section 86D of Indian Companies Act, 1913.

(10) If he acts in contravention of section 86F of the aforesaid Act.

98. The Manging Agents and evey Director, Officer or servant of the Company shall be indemnified out of its funds for all costs, charges, travelling or other expenses, losses and liabilities incurred by them or him in the conduct of the Company's business, or in the discharge of their or his duties, and neither the Managing Agents nor any Director, Officer, or servant of the Company shall be held liable for joining in any receipt, or other act for conformity's sake or for any loss or expenses happening to the Company by insufficiency or deficiency of any security on, in or upon which any of the moneys of the Company shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited, or for any other loss, or damage, or misfortune whatsoever, which shall happen in the execution of their or his, office, or in relation thereto, unless the same shall happen through their or his wilful act, neglect or default.

99. The Managing Agents and Directors shall not be disqualified by their office from contracting with the Company either as vendor or purchaser, or otherwise, nor shall

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any such contract or arrangement entered into by or on behalf of the company with any company, or partnership of or in which the Managing Agents, or any member of the Managing Agents' firm, or any Director shall be a member or otherwise interested, be avoided, nor shall the Managing Agents or any member of their firm, or any director so contracting or being such member or so interested be liable to account to the Company for any profit realized by any such contract or arrangement, by reason only of the Managing Agents or such Director holding that office, or of the fiduciary relations thereby established but the nature of their or his interest must be disclosed by them or him at the meeting of the directors, at which the contract or arrangement is determined on or approved, if the interest then exists, or in any other case, at the first meeting of the Directors after the acquisition of the interest : Provided nevertheless that a general notice that the Managing Agents, or any member of their firm or any Director is a member of any specified firm or company, and is to be regarded as interested in any subsequent transaction with such firm or company shall, as regards any such transaction, be a sufficient disclosure within the meaning of this Article, and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company. And provided also that (except in the case of a contract of indemnity against any loss that the Managing Agents, or any one or more of the Directors may suffer by reason of becoming or being sureties or a surety for the Company) no Director shall vote in respect of any contract or arrangement in which he is so interested, and if he do so vote his vote shall not be counted. And any Director who is a Solicitor or Advocate or Pleader may act as the Solicitor or legal adviser of the Company and shall not be liable to account to the Company for any profit realized for any professional work done by him or his firm for the Company.

(3) Proceedings of Directors.

100. The Directors shall (as far as practicable) meet together at least once a month for the despatch of business, and may adjourn and otherwise regulate their meetings and proceedings as they think fit, and may determine the quorum necessary for the transaction of business. Until otherwise determined any two Directors shall be a quorum. The Managing Agents or any Director may at any time convene a meeting of the Directors. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the Chairman shall have a second or casting vote. It shall not be necessary to give any notice of any meeting of the Directors to any Director who is for the time being absent from India.

101. The Directors may elect one of their number as Chairman of the Board and in default thereof at all meetings of Directors, the Directors present shall choose one of their number to be Chairman.

102. The Directors may delegate any of their powers to Committees consisting of such members of their body as they think fit. Any such Committee shall, in exercise of the powers so delegated, conform to any regulations that may from time to time be imposed on them by the Directors.

103. The meetings and proceedings of any such Committee consisting of two or more members shall be governed by the provisions hereinbefore contained for regulating the meetings and proceedings of the Directors, so far as the same are applicable thereto and are not superseded by any regulations made by the Directors under the last preceding clause.

104. A resolution in writing, signed by all the Directors, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted.

105. All Minutes shall be signed by the Chairman of the meeting at which the same are recorded, or in case of the inability from any cause of such Chairman to sign the same, then by the person who shall preside as Chairman at the next ensuing meeting, and all Minutes purporting to be so signed shall for all purposes whatever be *prima facie* evidence of the actual passing of the resolutions recorded, and the actual and regular transaction or occurrence of the proceedings to be so recorded, and of the regularity of the meeting at which the same shall appear to have taken place.

VII. THE SEAL.

106. The Managing Agents shall provide for the safe custody of the seal. Every instrument to which the seal is affixed, shall be signed by at least one Director or other officer appointed by the Directors for that purpose, and countersigned by the Managing Agents.

VIII. ACCOUNTS AND DIVIDENDS.

(1) Accounts.

107. The Managing Agents shall cause proper books of accounts to be kept, in which shall be entered true and complete accounts of the affairs and transactions of the Company.

108. Any costs, charges and expenses incurred or sustained in or about the establishment of the Company, including therein the costs of advertising, printing, stationary, brokerage, commission, legal expenses, furniture and fittings of office, and other costs, charges, and expenses which the Managing Agents, with the approval of the Directors, consider may be fairly treated as preliminary expenses, may be placed to a separate account to be called the "Preliminary Expenses Account," and shall be chargeable either on the profits of the Company, or to capital as the Managing Agents with the like approval deem expedient.

109. The books of account shall be kept at the office. The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to inspection of members not being Directors. No member (not being a Director) shall have any right to inspect the same, except as conferred by the Indian Companies Acts, or authorised by the Directors, or by any resolution of the Company in General Meeting.

110. At the Ordinary Meeting in every year, the Managing Agents shall lay before the Company a profit and loss account and a balance sheet containing a summary of the property and assets and capital and liabilities of the Company in the form market "F" in the Third Schedule to the Companies Act, 1913, or as near thereto as circumstances will admit, made up to as recent a date as practicable from the time when the last preceding account and balance sheet were made up. Every such account and balance sheet shall be signed by at least two Directors, and by the Managing Agents.

110A. The profit and loss account shall in addition to the matters referred to in subsection (3) of section 132 of the Indian Companies Act, 1913 show, arranged under the most convenient heads, the amount of gross income, distinguishing the serveral sources from which it has been derived and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against a year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

111. Every such balance sheet shall be accompanied by a report of the Directors and the Managing Agents as to the state and condition of the Company, and as to the amount which they recommend to be paid out of the profits by way of dividend or bonus to the members, and the amounts (if any) which they propose to carry to the reserve, depreciation, or other special funds, according to the provisions in that behalf hereinbefore contained, and every such report shall be signed by the Managing Agents and at least by two of the Directors.

112. A printed copy of such account, balance sheet and report shall, at least fourteen days previous to such meeting, be served on the registered holders of shares in the manner in which notices are hereinafter directed to be served, and a copy thereof shall be deposited at the Registered Office of the Company for the inspection of members, for a period of fourteen days at least before such meeting.

113. After such account, balance sheet and report with the auditors' report thereon has been laid before the Company in General Meeting, a copy thereof signed by the Managing Agents shall be filed with the Registrar within 21 days of the Meeting. If the General Meeting before which such account, balance sheet and report are laid does not adopt the balance sheet, a statement of that fact and the reasons therefor shall be annexed to the balance sheet, and to the copy thereof filed with the Registrar.

(2) Auditors.

114. Once at least in every year the accounts of the Company shall be examined, and the correctness thereof and of the balance sheet ascertained by one or more Auditor or Auditors.

115. The first Auditors shall be appointed by the Directors, and shall hold office until the yearly General Meeting in the year 19 . Subsequent Auditors shall be appointed by the Company at the Ordinary Meeting in each year. The remuneration of the first Auditors shall be determined by the Directors, and that of subsequent Auditors shall be determined by the Company in General Meeting. Any Auditor quitting office shall be eligible for re-election.

116. If one Auditor only is appointed all the provisions herein contained relating to Auditors shall be applied to him.

117. If any casual vacancy occurs in the office of Auditor, the Directors may and shall forthwith fill up the same.

118. The Auditors of the Company shall have a right of access at all times to the books, accounts and vouchers of the Company, and shall be entitled to require from the Managing Agents, Directors and other officers of the company, such information and explanation as may be necessary for the performance of the duties as Auditors.

119. Every account of the Managing Agents when audited and approved by a General Meeting shall be conclusive, except so far as regards any error discovered therein before or at the audit of the then next account, and whenever such error is discovered within that period the account shall be forthwith corrected and thenceforth shall be conclusive.

(3) Dividends.

120. Subject to the rights of holders of Preference Shares and other shares, if any, issued upon special conditions and to Articles 49 and 50 hereof, the net profits of the Company shall be divisible among the Ordinary Shareholders in proportion to the amount paid up on the Ordinary Shares held by them respectively.

121. The Company in Ordinary or Extraordinary General Meeting may declare a dividend to be paid to the members according to their rights and interests in the profits, and for the purpose of the equalisation of dividends any sums from time to time in accordance with these presents carried to the reserve, depreciation, or other special funds may, subject to due provision being made for actual loss or depreciation, be applied in payment thereof.

122. Whenever in their opinion the profits of the Company permit, the Managing Agents, with the sanction of the Directors, may declare an interim dividend.

123. If and whenever any bonus on shares is declared out of profits, and whether alone or in addition to any dividend thereon, the bonus shall for all purposes whatsoever be deemed to be a dividend on the shares.

124. When any shareholder is indebted to the Company for calls or otherwise, all dividends payable to him, or a sufficient part thereof, may be retained and applied by the Managing Agents in or towards satisfaction of the debt.

125. No dividend shall be payable except out of the net profits of the year or any other undistributed profits, and no larger dividend shall be declared than is recommended by the Directors.

126. Any General Meeting declaring a dividend may authorize payment of such dividend wholly or in part by the distribution of paid-up shares, debentures or debenture stock of the Company, or paid up shares, debentures or debenture stock of any other Company, or in any one or more of such ways, and the Managing Agents may, with the sanction of the directors, give effect to such resolution.

127. In case two or more persons are registered as the joint-holders of any share, any of such persons may give effectual receipts for all dividends and payments on account of dividends in respect of such share.

128. Unless otherwise directed by the Company in General Meeting, any dividend may be paid in cash or by cheque or warrant or money order sent through the post to the registered address of the member entitled, or in the case of joint-holders, to the registered address of that one whose name stands first on the register in respect of the joint-holding and every cheque so sent shall be made payable to the order of the person to whom it is sent.

129. All dividends on any share not having a legal registered owner entitled to require payment of and competent to give a valid receipt for the same, shall remain in suspense until some competent person be registered as the holder of the share, provided that all dividends remaining for three years after the declaration thereof unclaimed by some person entitled and competent to receive and give a valid receipt for the same, may

at the end of that period be forfeited to the Company and cease to be payable, and may be carried to such fund of the Company as the Managing Agents with the sanction of the Directors, may see fit, but the Managing Agents, with the sanction of the Directors, may remit the forfeiture whenever they may think proper.

130. Unpaid dividends shall never bear interest as against the Company.

IX. WINDING UP.

131. If the company shall be wound up and the surplus assets shall be more than sufficient to repay the whole of the paid up capital, the excess shall be distributed among the members in proportion to the capital paid up or which ought to have been paid up on the ordinary shares held by them respectively at the commencement of the winding up, and if the surplus assets shall be insufficient to repay the whole of the paid up capital, such surplus assets shall be distributed so that, as near as may be, the losses shall be borne by the members in proportion to the capital paid up, or which ought to have been paid up, on the ordinary shares held by them respectively at the commencement of the winding up, but this clause is to be without prejudice to the rights of the holders of shares issued upon special conditions.

132. In a winding up the liquidator may, irrespective of the powers conferred on him by the Indian Companies Act, and as an additional power, with the authority of a Special Resolution, sell the undertaking of the Company, or the whole or any part of its assets, for shares fully or partly paid up or the obligations of or other interests in any other Company and may by the contract of sale agree for the allotment to the members direct of the proceeds of sale in proportion to their respective interests in the Company. Any such sale or arrangement or the Special Resolution confirming the same may, subject to the provisions of Article 45 hereof provided for the distribution or appropriation of the shares, or other benefits to be received in compensation otherwise than in accordance with the legal rights of the contributories of the Company, and in particular, any class may be given preferential or special rights, or may be excluded altogether or in part, and further by the contract a time may be limited at the expiration of which shares, obligations or other interests not accepted or required to be sold shall be deemed to have been refused, and be at the disposal of the Liquidator or the purchasing Company.

Names, Addresses and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.	Names, Addresses and Descriptions of Witnesses.

Dated this *day of* 19 .

FORM 64.

Articles of Association of a Company intended to be run by the Directors only.

THE INDIAN COMPANIES ACT, 1913.

ARTICLES OF ASSOCIATION

of

LIMITED.

PRELIMINARY.

1. The regulations contained in Table A in the First Schedule to the Indian Companies Act, 1913, shall not apply to the Company, except in so far as the same are reapeated in these Articles, and except Regulations 56, 66, 71, 78 to 82, 95, 97, 105, 107 and 112 to 116 (both included) of the said table A.

2. In the construction of these Articles, unless there shall be something in the subject or context inconsistent therewith :

"Special Resolution" and "Extraordinary Resolution" have the meanings assigned thereto respectively by the Indian Companies Act, 1913.

"The Directors" means the Directors for the time being.

"The Office" means the Registered Office for the time being of the Company.

"The Register" means the Register of Members to be kept pursuant to the Indian Companies Act, 1913.

"Month" means calendar month according to the English style.

"In writing" means written or printed, partly written and partly printed, and includes lithography, type-writing and other means of representing words in a visible form.

Words importing the singular number only, include the plural number and *vice versa.*

Words importing the masculine gender only, include the feminine gender.

Words importing persons include corporations.

SHARES.

3. [Here insert provisions of article 7 of From 61].

4. The shares shall be under the control of the Directors, who may allot or otherwise dispose of the same to such persons, on such terms and conditions, and at such times, as the directors think fit.

5. The Company may make arrangement on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and the time of payment of calls.

6. If by the conditions of allotment of any share the whole or part of the amount or issue price thereof shall be payable by instalments, every such instalment shall when due be paid to the Company by the holder of the share.

7. The joint-holders of a share shall be severally as well as jointly liable for the payment of all instalments and calls and interest on instalments and calls due in respect of such share.

8. The Company shall not be bound to recognize any equitable, contingent, future or partial claim to or interest in such share on the part of any other person, save as herein provided or save as ordered by some Court of competent jurisdiction.

9. Upon any offer of shares or debentures of the Company for subscription, it shall be lawful for the Company (but so that the provision of the Indian Companies Act, 1913, are not infringed), in addition to the power to pay brokerage, to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally for any such shares or debentures, or procuring or agreeing to procure subscriptions whether absolute or conditional for the same, and such commission or any brokerage may be paid either in cash, debentures, or shares of the Company credited as fully or partly paid, provided always that such commission paid or agreed to be paid in respect of shares shall not exceed per cent. of the total nominal amount of the shares offered fot subscription.

10. No member shall be entitled to enter into or upon any premises or property of the Company or to require any information regarding any detail of the Company's business or any matter which may be in the nature of a trade secret or secret process which in the opinion of the Directors it will be inexpedient in the interest of the Company to communicate to the public.

11. The certificates of title to shares shall be issued under the Seal of the Company and shall be signed by two of the Directors.

12. Every member shall be entitled to one certificate for the shares registered in his name or to several certificates, each for one or more of such shares.

13. If any certificates be worn out or defaced, then upon production thereof to the Directors they may order the same to be cancelled and may issue a new certificate in lieu thereof and if any certificate be lost or destroyed, then upon proof thereof to the satisfaction of the Directors and on such indemnity as the Directors deem adequate being given, a new certificate in lieu thereof may be given to the party entitled to such lost or destroyed certificate.

14. The sum of one rupee shall be paid to the Company for every such new certificate and the like fee shall be payable in respect of each subdivision of certificates.

15. The certificates of shares registered in the name of two or more persons shall be delivered to the person first named on the Register.

CALLS.

16. The Directors may from time to time (subject to any terms on which any shares may have been issued) make such calls as they think fit upon the members in respect of all moneys unpaid on the shares held by them respectively, and not by the conditions of allotment thereof made payable at fixed time, and each member shall pay the amount of every call so made on him to the persons and at the times and places appointed by the Directors. A call may be made payable by instalments.

17. A call shall be deemed to have been made at the time when the Resolution of the Directors authorizing such call was passed.

18. Not less than days' notice of any call shall be given specifying the time and place of payment and to whom the same shall be paid.

19. If the sum payable in respect of any call or instalment be not paid on or before the day appointed for the payment thereof, the holder for the time being of the share in respect of which the call shall have been made or the instalment shall be due shall pay interest for the same at the rate of per cent. per annum from the day appointed for the payment thereof to the time of the actual payment or at such other rate as the Directors may determine.

20. The Directors may, if they think fit, receive from any member willing to advance the same all or any part of money unpaid upon the shares held by him beyond the sums actually called for and upon the money so paid in advance or so much thereof as from time to time exceeds the amount of calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the Directors agree upon. Money so paid in excess of the amount of calls shall not rank for dividends.

LIEN ON SHARES.

21. The Company shall have a first and paramount lien upon all the shares registered in the name of each member (whether solely or jointly with others) for his debts or liabilities and engagement solely or jointly with any other persons or with the Company whether the period for the payment fulfilment or discharge thereof shall have actually arrived or not, and such lien shall extend to all dividends from time to time declared in respect of such shares.

22. For the purpose of enforcing such lien the Directors may sell the shares subject hereto in such manner as they think fit, but no sale shall be made until such period as aforesaid shall have arrived and until notice in writing of the intention to sell shall have been served on such member, his executors or administrators, and default shall have been made by him or them in the payment, fulfilment or discharge of such debts, liabilities or engagements for 7 days after such notice.

23. The net proceeds of any such sale shall be applied in or towards satisfaction of such debts, liabilities or engagements and the residue (if any) paid to such members, his executors, administrators, or assigns.

FORFEITURE AND SURRENDER OF SHARES.

24. If any member fail to pay any call or instalment by the day appointed for the payment of the same, the Directors may at any time thereafter during such time as the call or instalment remains unpaid serve a notice on such member requiring him to pay the same together with any interest that may have accrued and expenses that may have been incurred by the reason of such non-payment.

25. The notice shall name a further day (not being less than 15 days from the date of the notice) and a place on and at which such call or instalment and such interest and expenses as aforesaid are to be paid. The notice shall state that in the event of payment not being made at or before the time and at the place appointed, the shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

26. If the requisitions of the notice referred to in the last preceding Articles are not complied with, any shares in respect of which such notice has been given may at any time thereafter before any payment of all calls or instalments, interest

and expenses due ie respect thereof, be forfeited by a resolution of the Directors to that effect; such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

27. When any share shall have been so forfeited, notice of the resolution shall be given to the member in whose name it stood immediately prior to the forfeiture and an entry of the forfeiture with the date thereof shall forthwith be made in the register.

28. Any share so forfeited shall be deemed to be the property of the Company, and the Directors may sell, re-allot or otherwise dispose of the same in such manner as they think fit. But the Directors may at any time before any share so forfeited shall have been sold, re-allotted or otherwise disposed of, annul the forfeiture thereof upon such conditions as they think fit.

29. Any member whose shares have been forfeited shall notwithstanding be liable to pay and shall forthwith pay to the Company all calls, instalments, interest, and expenses owing upon or in respect of such shares at the time of the forfeiture together with interest thereon from the time of forfeiture until payment at
per cent. per annum and the Directors may enforce the payment thereof if theythink fit.

30. The Directors may accept the surrender of any share by way of compromise of any question as to the holder being properly registered in respect thereof or on any other terms they think fit.

31. Upon any sale after forfeiture or surrender or for enforcing a lien in purported exercise of the powers hereinbefore given, the Directors may cause the purchaser's name to be entered in the Register in respect of the shares sold and the purchaser shall not be bound to see to the regularity of the proceedings or to the application of the purchase money, and after his name has been entered in the Register in respect of the shares the validity of the sale shall not be impeached by any person and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

TRANSFER AND TRANSMISSION OF SHARE.

32. The instrument of transfer of any share shall be in writing in the usual common form and shall be signed both by the transferor and the transferee, and the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the Register in respect thereof.

33. The Directors may without assigning any reason decline to register any transfer of shares not fully paid up or upon which the Company has a lien.

34. Every instrument of transfer shall be left at the office for registration accompained by the certificates of the shares to be transferred and such evidence as the Directors may require to prove the title of the transferor or his right to transfer the shares and by payment of the proper fee. The instrument of transfer shall, unless the Directors decline to register it, be retained by the Company. The Directors may waive the production of any certificate upon evidence satisfactory to them of its loss or destruction.

35. (Here put in articles 34A and 35 of Form No. 61, substituting "Directors" for "Managing Agents").

36. The executors or administrators of a deceased member (not being one of several joint-holders) shall be the only persons recognised by the Company as having any title to the shares registered in the name of such member, and in case of the death of any one or more of the joint-holders of any shares the survivor or survivors shall be the only persons recognized by the Company as having any title to or interest in such shares, but nothing herein contained shall be taken to release the estate of a deceased joint-holder from any liability on shares held by him jointly with any other persons.

37. Subject to the provisions of the last preceding Article, any person becoming entitled to or to transfer any share in consequence of the death, bankruptcy or insolvency of any member or in any way other than by transfer, upon producing the share certificate and such evidence that he sustains the character in respect of which he proposes to act under this clause or of his title, as the Directors think sufficient, may with the consent of the Directors (which they shall not be under any obligation to give) and subject to the regulations as to transfer hereinbefore contained be registered as a member himself in respect of, or may, with such consent and subject as aforesaid, transfer the share. There shall be paid to the Company in respect of any registration on transmission such fee not exceeding two rupees as the Directors deem fit.

CONSOLIDATION AND SUBDIVISION OF SHARES.

38. The Company in General Meeting may consolidate its shares or any of them into shares of a larger amount.

39. The Company may subdivide its shares or any of them into shares of a smaller amount and may determine that as between the holders of the shares resulting from such sub-division one or more of such shares shall have some preference or special advantage over or as compared with others or other.

INCREASE AND REDUCTION OF CAPITAL.

40. The Company may from time to time increase its capital by the creation of new shares of such amount as may be deemed expedient.

41. The new capital may be divided into preference shares, redeemable preference shares, ordinary shares or deferred shares and may be issued upon such terms and conditions and with such rights and privileges annexed thereto as shall be directed in such resolution or in default of such direction as the Directors may determine, and in particular such shares may be issued with a preferential or qualified right to dividends and in the distribution of the assets of the Company and with a special or without any right of voting.

42. Subject in all respects to any direction to the contrary that may be given by the General Meeting at which the resolution for any new shares is passed, such shares shall be offered in the first instance either at par or at a premium as the Directors may decide to all the then members, or any class thereof in proportion to the amount of the capital held by them and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting the time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or as to the share of any particular member on the receipt of an intimation from such member that he declines to accept the shares offered, they may be dealt with and disposed of by the Directors in such manner as they think fit.

43. Except so far as otherwise provided by the conditions of issue or by these presents, any capital raised by the creation of new shares shall be considered part of the original ordinary capital and shall be subject to the provisions herein contained.

44. The Company may from time to time by Special Resolution (i) reduce its capital by paying off capital or cancelling capital which has been lost or is unrepresented by available assets or reducing the liability on the shares or otherwise as may seem expedient, (ii) pay off any part of its capital upon the footing that it may be called up again or otherwise.

BORROWING POWERS.

45. The Directors may from time to time at their absolute discretion raise or borrow any sum or sums of money for the purposes of the Company and from any persons, banks, firms or companies particularly any person holding the office of Director and may secure the payment of such moneys in such manner and upon such terms and conditions in all respects as they think fit and in particular by the issue of debentures or debenture-stock of the Company or by making, drawing, accepting or endorsing on behalf of the Company any promissory notes or bills of exchange or giving or issuing any other security of the Company or by mortgage or charge of all or any of the property of the Company including its uncalled capital for the time being, but so that except with the sanction of a General Meeting of the Company not more than the sum of Rs. shall at any one time be owing for principal in respect of moneys so raised or borrowed, but no lender or other person dealing with the Company shall be bound to see or enquire whether this limit is observed, and the Directors may guarantee the whole or any part of the loans or debts raised or incurred by or on behalf of the Company or any interest payable thereon with power to the Directors to indemnify the guarantors from or against liability under their guarantees by means of a mortgage or hypothecation of or charge upon any property and assets of the Company or otherwise.

46. Debentures and other securities may be made assignable free from any equities between the Company and the persons to whom the same may be issued.

47. Any debentures or other security may be issued at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawing, allotment of shares, attending and voting at General Meeting of the Company or otherwise.

MODIFYING RIGHTS.

48. Whenever the capital by reason of the issue of preference shares or otherwise is divided into different classes of shares, all or any of the rights and privileges attached to each class may be varried, modified, commuted, affected, abrogated or dealt with by agreement between the Company and any person purporting to contract on behalf of that class, provided such agreement is (*a*) ratified in writing by the holders of at least three-fourths in nominal value of the issued shares of that class or is (*b*) confirmed by an Extraordinary Resolution passed at a separate General Meeting of the holders of shares of that class and all the provisions hereinafter contained as to General Meetings shall *mutatis mutandis* apply to every such meeting, but so that the quorum thereof shall be members holding or members or persons representing by proxy or attorney members holding one-tenth in nominal value of the issued shares of that class. This clause is not to derogate from any power the Company would have had if this clause were omitted.

RESERVE FUND.

49. The Directors may from time to time before recommending any dividend set aside out of the profits of the Company such sums as they think fit as a reserve fund for redemption of debentures or to meet contingencies or for equalisation of or for special dividends or for rebuilding, repairing, restoring, replacing, improving, maintaining or altering any of the property of the Company or for such other purposes as the Directors may in their absolute discretion think conducive to the interest of the Company and may invest the several sums so set aside in or upon such investments or securities as they think fit or employ the same in the business of the Company and without being bound to keep the same separate from the other assets or keep the same on deposit at any bank and from time to time deal with or vary such investments and dispose of all or any part thereof for the benefit of the Company, and they may divide the reserve fund into special funds as they think fit with full power to employ the assets constituting the reserve fund in the business of the Company and that without being bound to keep the same separate from the other assets.

CONVENING OF GENERAL MEETINGS.

50. The Statutoty General Meeting shall be held at such time within a period of not less than one month nor more than six months from the date on which the Company is entitled to commence business and at such place as the Directors may appoint. The provisions of section 77 of the Indian Companies Act, 1913, in relation to such meeting shall be observed by the Directors.

51. An Ordinary General Meeting shall be held within eighteen months from the date of its incorporation and thereafter once at least in every year at such time and place as may be determined upon by the Company in General Meeting or in default of any such determination, by the Directors, but so that not more than fifteen months shall elapse between any two such meetings.

52. The Directors may, whenever they think fit, and they shall, upon a requisition made in writing by members holding in the aggregate not less than one-tenth of the issued ordinary shares of the Company upon which all calls or other sums then due have been paid, forthwith proceed to call an Extraordinary General Meeting and in the case of such requisition the provisions of section 78 of the Indian Companies Act, 1913, shall be regarded.

53. At least fourteen clear day's notice to the members of any General Meeting other than a meeting for the passing of a Special Resolution specifying the place, day and hour of meeting and in the case of special business the general nature of such business shall be given in manner hereinafter mentioned or in such other manner as may from time to time be prescribed by the company in General Meeting. The accidental omission to give any such notice to or the non-receipt of any such notice by any member shall not invalidate the proceedings at any General Meeting or any resolution passed thereat. Where it is proposed to pass a Special Resolution at least twenty-one days' notice must be given specifying the intention to propose the resolution as a Special Resolution.

PROCEEDINGS AT GENERAL MEETINGS.

54. The business of an Ordinary General Meeting shall be to receive and consider the profit and loss account, the balance sheet and the reports of the Directors and of the Auditors, to declare dividends and to transact any other business which under these

presents ought to be transacted at an Ordinary General Meeting. All other business transacted at an Ordinary General Meeting and all business transacted at an Extraordinary General Meeting shall be deemed special.

55. Five members present in person or by proxy or attorney shall be a quorum for a General Meeting.

56. No business shall be transacted at any General Meeting unless the quorum requisite shall be present at the commencement of the business.

57. At every General Meeting a Director appointed by the Directors as the Chairman of the Directors shall take the chair, but if there be no such Chairman or he be not present, the members present shall choose a Director as Chairman and if no Director be present or all the Directors present decline to take the Chair, then the members present shall choose one of their number to be Chairman.

58. If within half-an-hour from the time appointed for the holding of a General Meeting the requisite quorum be not present, the meeting if convened on the requisition of or by members shall be dissolved and in every other case shall stand adjourned to the same day in the next week at the same hour and place, and if at such adjourned meeting the requisite quorum be not present, those members who are present shall be a quorum and may transact the business for which the meeting was called.

59. The Chairman with the consent of the meeting may adjourn any General Meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place and which might have been transacted at that meeting.

60. Every question submitted to any General Meeting shall be decided in the first instance by a show of hands and in the case of an equality of votes the Chairman shall both on a show of hands and at the poll have a casting vote in addition to the vote or votes to which he may be entitled as a member.

61. [Here insert article 64 of Form 61].

62. If a poll is demanded as aforesaid it shall be taken in such manner and at such time and place as the Chairman of the meeting directs and either at once or after an interval or adjournment or otherwise and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand of the poll may be withdrawn. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

63. No poll shall be demanded on the appointment of a Chairman or a question of adjournment.

VOTES OF MEMBERS.

64. Upon a show of hands every member holding ordinary shares present in person or in the case of corporation, by a proxy or attorney or a representative under section 80 of the Indian Companies Act, 1913, shall have one vote and upon a poll every member present in person or by proxy or attorney or by representative under section 80 of the said Act shall have one vote for every ordinary share held by such member.

65. If any member be of unsound mind he may vote by his committee, manager or other legal curator of his estate. Any person entitled under the transmission clause to be registered in respect of or to transfer any ordinary shares may vote either personally or by proxy or attorney in respect thereof as if he were the registered holder thereof.

66. Where there are joint registered holders of any ordinary shares any one of such persons may vote at any meeting either personally or by proxy or attorney in respect of such shares as if he were solely entitled thereto and if more than one of such joint-holders be present at any meeting personally or by proxy or attorney, that one of the said persons so present whose name stands prior in order in the Register in respect of such shares shall alone be entitled to vote in respect thereof. Several executors or administrators of a deceased member in whose name ordinary shares stand shall for the purposes of this Article be deemed joint-holders of such shares.

67. Votes may be given, either personally or by proxy or by attorney or by a representative under section 80 of the Indian Companies Act, 1913.

68. No person shall be appointed a proxy who is not a member of the Company and qualified to vote save that a corporation being a member of the Company may appoint as its proxy any person whether a member of the Company or not. An attorney of a member need not himself be a member.

69. [Here insert articles 75 of Form 61].

70. A vote given in accordance with the terms of a power-of-attorney or of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the power of instrument or the transfer of the share in respect of which the vote is given, provided no intimation in writing of the death, revocation or transfer shall have been received at the office before the meeting. The instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney and shall be as nearly as circumstances will admit in the form or to the effect following:—

"I being a member of the Limited, hereby appoint of or failing him of as my proxy to vote for me and on my behalf at the (Ordinary or Extraordinary as the case may be) General Meeting of the Company to be held on the day of and at any adjournment thereof

As Witness my hand this day of "

71. No member shall be entitled to be present or to vote on any question either personally or otherwise or in the capacity of attorney or proxy at any General Meeting or upon a poll or be reckoned in a quorum whilst any call or other money shall be due and payable to the Company in respect of any of the shares of such member.

DIRECTORS.

72. Until otherwise determined by a General Meeting the number of Directors shall not be less than three nor more than seven.

73. The first Directors shall be—

(1). Mr.

(2). Mr.

(3). Mr.

(4). Mr.

74. Each of the directors shall be paid out of the funds of the Company by way of remuneration for his services the sum of Rs. for each meeting of the Directors attended by him. As further remuneration the Directors shall receive a commission of one per cent. on the net profits of the Company before setting aside thereout any sums for depreciation or for any reserve fund, and such commission shall be divided among the Directors in such manner as they may agree or failing agreement, equally.

75. The continuing Directors may act notwithstanding any vacancy in their body, but if the number falls below the minimum above fixed the Directors shall not, except for the purpose of filling vacancies, act so long as the number remains below the minimum.

76. The qualification of every Director shall be his holding ordinary shares on which all calls shall have been paid to the aggregate nominal value of Rs.

POWERS OF DIRECTORS.

77. The business of the Company shall be managed by the Directors who may, in addition to the powers and authorities by these presents or otherwise expressly conferred upon them, exercise all such powers and do all such things as may be exercised or done by the Company and are not hereby or any enactment expressly directed or required to be exercised or done by the Company in General Meeting, but subject nevertheless to the provisions of any enactment and of these Articles and to any regulations from time to time made by the Company in General Meeting, provided that no regulation so made shall invalidate any prior act of Directors which would have been valid if such regulation had not been made.

78. Without prejudice to the general powers conferred by the last preceeding Article and the other powers conferred by these Articles the Directors shall have the following powers, that is to say, powers :—

(a) To pay the costs, charges and expenses preliminary and incidental to the promotion, establishment and regulation of the Company.

(b) To take on lease, purchase or otherwise acquire for the Company any property, rights or privileges which the Company is authorised to acquire at such price and generally on such terms and conditions as they think fit.

(*c*) To appoint any person or persons to hold in trust for the Company any property belonging to the Company or in which it is interested or for any other purposes, and execute and do all such instruments and things as may be requisite in relation to any such trust.

(*d*) To sell, let, exchange or otherwise dispose of absolutely or conditionally all or any part of the property, privileges and undertaking of the Company upon such terms and conditions and for such consideration as they may think fit.

(*e*) To buy or procure the supply of all plant, machinary, materials, stores, fuel, implements and other movable property required for the purposes of the Company.

(*f*) To sell and dispose of all articles and goods manufactured or dealt in by the Company.

(*g*) To engage, fix and pay the remuneration of and dismiss or discharge all managers, engineers, agents, secretaries, clerks,-servants, workmen and other persons, employed or to be employed in or in connection with the Company's business.

(*h*) To appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with powers, authorities and discretions, not exceeding those vested in or exercisable by the Directors, and for such period and subject to such conditions, as the Directors may from time to time think fit.

(*i*) To enter into, carry out, rescind or vary all financial arrangements with any banks, persons or corporations for or in connection with the Company's business or affairs and pursuant to or in connection with such arrangements to deposit, pledge or hypothecate any property of the Company or the documents representing or relating to the same.

(*j*) To make and give receipts, releases and other discharges for money payable to the Company and for the claims and demands of the Company.

(*k*) To compound and allow time for the payment or satisfaction of any debts due to or by the Company and any claims and demands by or against the Company and to refer any claims or demands by or against the Company to arbitration and observe and perform the awards.

(*l*) For and on behalf of the Company to draw, accept, endorse and negotiate all such cheques, bills of exchange, promissory notes, hoondies, drafts, Government and other securities as shall be necessary in or for carrying on the affairs of the Company.

(*m*) To institute, prosecute, defend, compromise, withdraw or abandon any legal proceedings by or against the Company or its officers or otherwise concerning the affairs of the Company.

(*n*) To invest and deal with any of the moneys of the Company not immediately required for the purposes thereof upon such securities or investments and in such manner as they may think fit and from time to time to vary or realize such securities and investments.

(*o*) To enter into such negotiations and contracts and rescind or vary all such contracts and execute and do all such acts, deeds and things in the name and on behalf of the Company as they may consider expedient for or in relation to any of the matters aforesaid or otherwise for the purposes of the Company.

(*p*) To pay for any property or rights acquired by or services rendered to the Company or the premiums payable in respect of any leases taken by the Company either wholly or partially in cash or in shares, bonds, debentures or other securities of the Company and any such shares to be issued either as fully paid up or with such amount credited as paid up thereon as may be agreed upon and any such bonds, debentures or securities to be either specifically charged upon all or any part of the property of the Company and its uncalled capital or not so charged.

PROCEEDINGS OF DIRECTORS.

79. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit and may determine the quorum necessary for the transaction of business. Until otherwise fixed the quorum shall be two Directors.

80. Any Director may at any time summon a meeting of the Directors.

81. Questions arising at any meeting shall be decided by a majority of votes, each Director having one vote and in case of an equality of votes the Chairman shall have a second or casting vote.

82. The Directors may elect for each year a Chairman of the Board of Directors who shall take the chair, but if there be no such Chairman or he be not present the Directors present shall choose snme one of their number to be Chairman of such meeting.

83. A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under these Articles vested in or exercisable by the Directors generally.

84. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed on it by the Directors.

85. The meetings and proceedings of any such committee consisting of two or more members shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors so far as the same are applicable thereto and are not superseded by any regulations made by the Directors under the last preceeding Article.

86. All acts done by the Directors or a committee of the Directors shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Directors or committee or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was duly qualified.

87. A resolution in writing signed by all the Directors for the time being shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted.

88. The Directors shall cause minutes to be kept in books provided for the purpose of all resolutions and proceedings of General Meetings and of Meetings of the Directors and of committees of the Directors, and any such minutes if purporting to be signed by the Chairman of the meeting to which they relate or by the Chairman of the next succeeding meeting shall be evidence of such resolution and proceedings.

DISQUALIFICATION OF DIRECTORS.

89. [Here insert article 97 of From 61].

ROTATION OF DIRECTORS.

90. At the first Ordinary General Meeting in the year 19 all the Directors shall retire and at the Ordinary General Meeting in every succeeding year one-third of the Directors for the time being shall retire from office. In every subsequent year the directors who have been longest in office shall retire. As between two or more Directors who have been in office an equal length of time the Directors to retire shall in default of agreement between them be determined by lot. The length of time a Director has been in office shall be computed from his last election or appointment where he has previously vacated office.

91. A retiring Director shall be eligible for re-election.

92. The Company at the General Meeting at which a Director retires may fill up the vacancy by electing a person to be Director.

93. [Here insert article 90A of Form 61].

94. No person not being a retiring Director shall, unless recommended by the Directors for election, be eligible for election at any General Meeting unless he or some member intending to propose him has at least seven days before the meeting left at the office a notice in writing signifying has candidature or the intention of such member to propose him.

95. The Company in General Meeting may at any time appoint any person to be a Director, and may from time to time increase or reduce the number of Directors and may also determine in what rotation such increased or reduced number is to go out of office.

96. Any casual vacancy occurring in the Board of Directors may be filled up by the

Directors but any person so chosen shall retain his office only as long as the vacating Director would have retained the same if no vacancy had occurred.

97. The Company may by an Extraordinary Resolution remove any Director before the expiration of his period of office and appoint another qualified person in his stead. The person so appointed shall hold office during such time only as the Director in whose place he is appointed would have held the same if he had not been removed, but this provision shall not prevent him from being eligible for re-election.

POWER OF DIRECTORS TO CONTRACT.

98. No Director shall be disqualified by his office as such from contracting with the Company either as vendor, purchaser, lessor, lessee, lender or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company with any company or partnership or in which any Director shall be a member or otherwise interested be avoided, nor shall any Director so contracting or so interested be liable to account to this Company for any profit realised by such contract or arrangement by reason only of such Director holding that office or of the fiduciary relation thereby established, but no such Director shall vote in respect of any such contract or arrangement and the nature of his interest must be disclosed by him at the meeting of the Directors at which the contract or arrangement is determined on if his interest then exists or in any other case at the first meeting of the Directors after the acquisition of his interest.

THE SEAL.

99. The Directors shall provide for the safe custody of the seal of the Company and every instrument to which the seal is affixed shall be signed by two of the Directors.

ACCOUNTS.

100. The Directors shall cause true accounts to be kept of all sums of money received and expended by the Company and the matters in respect of which such receipt and expenditure take place and of the assets, credits and liabilities of the Company.

101. The books of account shall be kept at the office, and the Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company shall be open to the inspection of the members, and no member not being a Director shall have any right of inspecting any account or book or document of the Company except as Conferred by any enactment or authorised by the Director or by a resolution of the Company in General Meeting.

102. At each Ordinary General Meeting in every year the Directors shall lay before the Company a profit and loss account and a balance sheet made up to a date not more than three months before the meeting from the time when the last preceding account and balance sheet were made up, or in the case of the first such account and balance sheet from the date of incorporation of the Company.

102A. [Here put in article 110A of Form No. 61)].

103. Every such balance sheet shall have attached thereto the Auditor's report and shall be accompanied by a report of the Directors as to the state and conditions of the Company and as to the amount (if any) which they recommend to be paid out of the profits by way of dividend or bonus to the members and the amount (if any) which they decide to carry to the reserve fund according to the provisions in that behalf hereinbefore contained and such account, balance sheet and report shall be signed by the Directors.

104. A printed copy of such account, balance sheet and report shall, fourteen days previously to the meeting, be served on the members in the manner in which notices are hereinafter directed to be served.

AUDIT.

105. Once at least in every year the accounts of the Company shall be examined and the correctness of the profit and loss account and balance sheet ascertained by an Auditor or Auditors and the provisions of the Indian Companies Act, 1913, in regard to audit and the appointment and qualification of Auditors shall be observed.

DIVIDENDS.

106. Subject as aforesaid the profits of the Company which it shall from time to time be determined to divide in respect of any year or other period shall be applied first

in paying the cumulative dividend on the preference shares to the close of such year or other period and secondly in paying a dividend for such year or other period on the ordinary shares in proportion to the capital paid up thereon respectively.

107. The Company in General Meeting may declare a dividend to be paid to the members according to their rights and interests in the profits and may fix the time of payment, but no larger dividend shall be declared than is recommended by the Directors.

108. No dividend shall be payable except out of the profit of the year or any other undistributed profits and no dividend shall carry interest as against the Company.

109. The Directors may from time to time pay to the members such interim dividends as in their judgment the position of the company justifies.

110. The Directors may retain any dividends on which the Company has a lien and apply the same in or towards satisfaction of the debts, liabilities or engagements in respect of which the lien exists.

111. A transfer of shares shall not pass the right to any dividend declared therein before the registration of the transfer.

112. Any one of several persons who are registered as joint-holders of any share may give effectual receipts for all dividends and payments in respect thereof.

113. Unless otherwise directed, any dividend may be paid by cheque or warrant sent through the post to the registered address of the member entitled or in the case of joint-holders to the registered address of that one whose name stands first on the register in respect of the joint-holding and every cheque or warrant so sent shall be made payable to the order of the person to whom it is sent.

114. All dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed and all dividends unclaimed for three years after having been declared may be forfeited by the Directors for the benefit of the Company.

115. Any General Meeting declaring a dividend may direct payment of such dividend wholly or in part by the distribution of specific assets and in particular of paid-up shares or debentures of the Company or paid-up shares or debentures of any other company, or in any one or more of such ways, and the Directors shall give effect to such resolution, and where any difficulty arises in regard to the distribution they may settle the same as they think expedient and in particular may issue fractional certificates and may fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees upon such trusts for the persons entitled to the dividend as may seem expedient to the Directors.

WINDING-UP.

116. If the Company shall be wound up and the assets available for distribution among the members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding-up, the excess shall be distributed among the members in proportion to the capital paid, or which ought to have been paid, at the commencement of the winding-up, on the shares held by them respectively, and if in a winding-up the assets available as aforesaid shall be insufficient to repay the whole of the paid-up capital, such assets shall be distributed so that as nearly as may be the losses shall be borne by the members in proportion to the capital paid up, or which ought to have been paid up, on the shares at the commencement of the winding-up held by them respectively, but this clause is to be without prejudice to the rights of the holders of shares issued upon special terms and conditions.

117. If the Company shall be wound up (whether voluntarily or otherwise) the liquidator may, with the sanction of an Extraordinary Resolution, divide amongst the contributories in specie or kind any part of the assets of the Company and may with the like sanction vest any part of the assets of the Company in trustees upon such trusts for the benefit of the contributories or any of them as the liquidator with the like sanction shall think fit.

INDEMNITY.

118. Every Director and other officer or servant of the Company shall be indemnified by the Company against, and it shall be the duty of the directors our of the funds of the Company to pay, all costs, losses and expenses which any such officer or servant may incur or become liable to by reason of any contract entered into or act or thing

done by such officer or servant as such or in any way in the discharge of the duties of such officer or servant including travelling expenses.

119. No Director or other officer of the Company shall be liable for the acts, receipts, neglects or defaults of any other Director or officer or for joining in any receipt or other act for conformity or for any loss or expense happening to the Company through the insufficiency or deficiency of title to any property acquired by order of the Directors for or on behalf of the Company or for the insufficiency or deficiency of any security or investment in or upon which any of the moneys of the Company shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited or for any loss occasioned by any error of judgment or oversight on his part or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto unless the same happen through his dishonesty.

Names, Addresses and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.	Names, Addresses and Descriptions of Witnesses.
TOTAL ...		

Dated the day of 19 .

FORM 65.

Articles of Association of a Private Limited Company intended to be managed by the Governing Director.

COMPANY LIMITED BY SHARES.

ARTICLES OF ASSOCIATION

of

LIMITED.

PRELIMINARY.

1. Subject as hereinafter provided the regulations contained in Table A in the First Schedule of the Indian Companies Act, 1913 (hereinafter referred to as "Table A") shall apply to the Company.

2. Regulations 5, 20, 31 to 40, 45, 49, 51, 53, 54, 68 to 70, 72 to 82, 84, 85, 88, 90 to 93, 103, 104, 110 and 111 of "Table A" shall not apply to the Company and the clauses hereinafter contained shall be applicable.

PRIVATE COMPANY.

3. The Company is a Private Company within the meaning of Section 2(1), Clause 13 of the Indian Companies Act, 1913 and accordingly, (1) no invitation shall be issued to the public to subscribe for any share, debenture or debenture-stock of the Company; (2) the number of members of the Company (exclusive of persons in the employ of the Company) shall be limited to fifty, provided that for the purposes of this provision where two or more persons hold one or more shares jointly in the Company, they shall be treated as a single member; and (3) the right to transfer shares in the Company is restricted in manner and to the extent hereinafter appearing.

SHARES.

4. The initial Capital of the Company is Rs. divided into ordinary shares of Rs. each.

5. The business of the Company may be commenced as soon after the incorporation of the Company as the Directors shall think fit and notwithstanding that part of the shares has been allotted.

6. The shares shall be under the control of the Directors who may allot or otherwise dispose of the same.

TRANSFER OF SHARES.

7. No transfer of any share shall be made or registered without the previous sanction of the Directors who may without assigning any reason decline to give any such sanction, and shall so decline in the case of any transfer the registration of which will involve a contravention of Clause 3 of these Articles.

7A. If registration of a share or debenture is refused, the Directors shall, within two months from the date on which the instrument of transfer was lodged, send to the transferee and the transferor notice of the refusal.

8. A fee not exceeding Re. 1 may be charged for each transfer approved by the Directors and shall be paid before registration thereof.

9. The instrument of transfer must be accompanied by the certificate of the shares.

RESTRICTION ON MEMBERS.

10. No member of the Company shall, without the consent in writing of all the Directors, be directly or indirectly employed or concerned or interested in or assist in carrying on any business in competition with the Company or having interest inconsistent with those of the Company otherwise than as a holder of shares or debentures in a concern in which this Company is interested as Managing Agent and if it be proved that any member has committed a breach of this provision the shares of such member shall be liable to be forfeited.

PROCEEDINGS AT GENERAL MEETINGS.

11. Seven days' notice at least specifying the place, the day and the hour of the general meeting and in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner as may be prescribed by the Company in general meeting, but accidental omission to give such notice to, or non-receipt of such notice by, any member shall not invalidate the proceedings of the general meeting. A general meeting may, with the consent of all the members, be called by a shorter notice and in such manner as the members think fit.

12. No business shall be transacted at any general meeting unless a quorum of members is present. Two members present in person or by porxy shall be a quorum for a general meeting.

13. The Governing Director shall preside at every general meeting but if at any meeting he shall not be present within 30 minutes after the time appointed for holding the same or shall be unwilling to preside, the members present shall choose some Director or if no Director be present or if all the Directors present decline to take the chair, they shall choose some member present to be the chairman of the meeting.

DIRECTORS.

14. Until otherwise determined by the Company in general meeting the number of Directors shall be not less than two nor more than five, including the Governing Director.

15. The first Directors shall be—

16. Mr. shall be the Governing Director of the Company and he shall hold that office for life or until he voluntarily resigns or becomes incapable of acting. The Governing Director shall, subject to the supervision of other Directors, have the engagement and dismissal of managers, engineers, assistants, clerks and labourers and the general direction and management of the business of the Company with full power to do all acts, matters and things, deemed necessary, proper or expedient for carrying on the business and concerns of the Company including the power to make such in-

vestments of the Company's funds as he shall think fit and to make and sign all contracts and to draw, sign, accept, endorse and negotiate, on behalf of the Company, all bills of exchange, promissory notes, hundies, cheques, drafts, Government promissory notes and other Government securities and other instruments. All money belonging to the Company shall be paid to such bankers as the Directors shall deem expedient and all receipts for money paid to the Company shall be signed by the Governing Director whose receipt shall be an effectual discharge for the moneys therein stated to have been received. The Governing Director may delegate all or any of the powers to such other Directors, managers, agents or other persons, as he may think fit, and shall have power to grant to any such persons such powers of attorney as he may deem expedient and such powers at pleasure to revoke.

17. The Governing Director shall not, while he continues to hold that office, be subject to retirement by rotation or removal.

18. [Here insert article 97 of Form 61.]

19. The qualification of a Director shall be the holding in his own right alone and not jointly with any other person of at least 25 ordinary shares and this qualification shall be acquired within two months after appointment.

20. Each Director including the Governing Director shall be paid out of the funds of the Company a fee of Rs.   for each meeting of the Board of Directors attended by him.

21. If the said Mr.   the first Governing Director and one of the Directors named herein, dies or resigns the office of the Governing Director, the Company may appoint any other person to be the Governing or Managing Director in his place and may fix terms and conditions as to his tenure of office, powers and remuneration provided that the Governing or Managing Director appointed after the death or resignation of Mr.   must have the requisite share qualification of a Director.

POWERS AND DUTIES OF DIRECTORS.

22. The business of the Company shall be managed by the Directors who may pay all such expenses of and preliminary and incidental to the promotion, formation, establishment and registration of the Company as they think fit and may exercise all such powers of the Company and do on behalf of the Company all such acts as may be exercised and done by the Company and as are not by the statute or by these Articles required to be exercised or done by the Company in general meetings subject nevertheless to any regulations in these Articles, to the provisions of the statutes and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.

BORROWING POWERS.

23. The Governing Director with the approval of the Directors may from time to time raise or borrow any sums of money for and on behalf of the Company from the members or other persons, companies or banks, or he may himseif advance money to the Company on such interest as may be approved by the Directors.

24. The Governing Director may, with the approval of the Directors, from time to time secure the payment of such money in such manner and upon such terms and conditions in all respects as he thinks fit and in particular by the issue of debentures or bonds of the Company or by mortgage or charge of all or any part of the property of the Company and of its uncalled capital for the time being.

25. Any debentures, bonds or other securities may be issued at discount, premium or otherwise and with special privileges as to redemption, surrender, drawing, allotment of shares, attending and voting at general meetings of the Company and otherwise.

RETIREMENT OF DIRECTORS.

26. Subject to the provisions of these Articles, the ordinary Directors for the time being shall retire from office at the ordinary general meeting in 19   and in every subsequent year. A retiring Director shall be eligible for re-election and shall act as a Director throughout the meeting at which he retires.

27. [Here insert article 90A of Form 61].

28. The Company may from time to time in general meeting increase or reduce the number of Directors and determine in what rotation such increased or reduced number shall go out of office.

29. Any casual vacancy occurring in the Board of Directors may be filled up by the remaining Directors, Director or Governing Director, but any person so chosen shall retain his office only until the next following ordinary general meeting of the Company and shall then be eligible for re-election.

PROCEEDINGS OF DIRECTORS.

30. The quorum necessary for transaction of the business of the Directors may be fixed by the Directors and unless so fixed shall be two.

31. The Governing Director shall take the chair at all Board Meetings. If at any meeting the Chairman be not present within 15 minutes after the time appointed for holding the same the Directors present shall choose some one of their number to be chairman of such meeting.

32. A resolution in writing signed by all the Directors shall be as effective for all purposes as a resolution passed at a meeting of the Directors duly called, held and constituted.

THE SEAL.

33. The Company shall have a Common Seal and the Directors shall provide for the safe custody thereof. The Seal shall not be applied to any instrument except by the authority of a resolution of the Board of Directors and in the presence of at least one Director or the Governing Director and such Director or Governing Director shall sign every instrument to which the Seal shall be affixed in his presence. Such signature shall be conclusive evidence of the fact that the Seal has been properly affixed.

DIVIDEND AND RESERVE FUND.

34. Every dividend warrant may be sent by post to the last registered address of the member entitled thereto and the receipt of the person whose name at the date of the declaration of the dividend appears on the Register of Members as the owner of any share or in the case of joint-holders of any one of such holders shall be a good discharge to the Company for all payments made in respect of such share. No unpaid dividend or interest shall bear interest as against the Company.

ACCOUNTS.

35. The Directors shall cause true accounts to be kept—

(a) of the assets and liabilities of the Company; and

(b) of all sums of money received and expended by the Company and the matters in respect of which such receipts and expenditures take place.

The books of account shall be kept at the Registered Office and shall always be open to the inspection of the Directors.

36. The Directors shall from time to time determine whether in any particular case or cases or generally and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members and no member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by statute or authorised by the Directors or by a resolution of the Company in general meeting.

AUDIT.

37. Once at least in every year the accounts of the Company shall be examined and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

38. The Directors shall appoint the first auditor who will hold office until the first ordinary general meeting.

39. The Directors may fill up any casual vacancy in the office of auditor.

40. The remuneration of the auditor shall be fixed by the Company in general meeting except that remuneration of any auditor appointed by the Directors may be fixed by the Directors.

INDEMNITY.

41. The Governing Director, Directors, Auditors, Secretary and other officers for the time being of the Company and any trustees for the time being acting in relation to any of the affairs of the Company and their heirs, executors and administrators respectively shall be indemnified out of the assets of the Company from and against all suits, proceedings, costs, charges, losses, damages and expenses which they or any of them shall or may incur or sustain by reason of any act done or omitted in or about the execution of their duty in their respective offices or trusts except such (if any) as they shall incur or sustain by or through their own wilful neglect or default respectively and no such officer or trustee shall be answerable for the acts, receipts, neglects or defaults of any other officer or trustee or for joining in any receipts for the sake of conformity or for the solvency or honesty of any bankers or other persons with whom any money or effects belonging to the Company may be lodged or deposited for safe custody or for any insufficiency or deficiency of any security upon which any moneys of the Company shall be invested or for any other loss or damage due to any such cause as aforesaid or which may happen in or about the execution of his office or trust unless the same shall happen through the wilful neglect or default of such officer or trustee.

WINDING UP.

42. If the Company shall be wound up the surplus assets shall (subject to any rights attached to any special class of shares forming part of the capital for the time being of the Company) be applied first in re-payment of the capital paid up on the ordinary shares, and the excess (if any) shall be distributed among the members holding ordinary shares in proportion to the number of ordinary shares held by them respectively at the commencement of the winding up.

43. If the Company shall be wound up the liquidators may, with the sanction of an Extraordinary Resolution, divide among the contributories in specie any part of the assets of the company.

Names, Addresses and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.	Names, Addresses and Descriptions of Witnesses.

Dated this day of 19 .

FORM 66.

Capital clauses of Companies having several classes of Shares.

I

The initial capital of the company is Rs. , divided into preference shares of Rs. each, and ordinary shares of Rs. each. The said preference shares shall be entitled to be paid out of the profits of each year, in priority to all other dividends, a fixed dividend for that year at the rate of p. c. p. a. on the capital paid up thereon, and shall be entitled to participate *pari passu* with the ordinary shares in the surplus profits of each year which shall remain after paying the fixed dividends aforesaid for such year on the said preference shares and a like dividend for such year on the capital paid upon the ordinary shares, and such preference shares shall be entitled in a winding up to have the capital paid up thereon to be paid off in priority to the other shares.

FORM 67.

II

The capital of the company is Rs. divided into preference shares of Rs. each subject as hereinafter provided the rights following shall be attached to the preference shares aforesaid:

(1) The holders of the said preference shares shall be entitled to a fixed cumulative preferential dividend at the rate of p. c. p. a. on the capital for the time being paid up on the said preference shares respectively, and to half the surplus profits, which in respect of each year it shall from time to time be determined to distribute, remaining after paying or providing for the payment of the dividend for such year at the rate of p. c. p. a. on the capital for the time being paid up on the ordinary shares.

(2) The holders of the said preference shares shall in a winding up have priority as to return of capital [and payment off of arrears of the said preferential dividend whether declared or not up to the commencement of the winding up] over all other shares in the capital for the time being of the company, but shall not have any further right to participate in the profits or assets.

(3) The rights hereby attached to the preference share may be varied in accordance with clause of the accompanying articles of association, but not otherwise, and that clause and also clauses and of the said articles shall be deemed to be incorporated herein and have effect accordingly.

FORM 68.

III

The capital of the company is Rs. divided into preference shares of Rs. each, ordinary shares of Rs. each and deferred shares of Rs. each. The rights following shall be attached to the shares aforesaid *inter se* subject as hereinafter provided, that is to say :—

(*a*) The said preference shares shall confer the right to a fixed cumulative preferential dividend at the rate of p. c. p. a. on the capital for the time being paid up thereon respectively, and shall rank both as regards such dividend and as to capital in priority to all other shares in the original capital, but shall not confer any further right to participate in profits or assets.

(*b*) Subject as aforesaid, the ordinary shares shall confer on the holders the right to a fixed cumulative dividend at the rate of p. c. p. a. on the capital for the time being paid up thereon respectively, and shall rank both as regards such dividend and capital next after the said preference shares.

(*c*) Subject as aforesaid, the said deferred shares shall confer the right to a fixed cumulative dividend at the rate of p. c. p. a. on the capital for the time being paid up thereon respectively, and shall rank both as regards such dividend and capital next after the ordinary shares.

(*d*) Subject as aforesaid, any profits which it may at any time be determined to distribute amongst the members, and in a winding up any surplus assets, after repayment of capital, shall be divided as to one-half between the holders of the ordinary shares aforesaid in proportion to the ordinary shares held by them respectively, and as to the other half among the holders of the deferred shares aforesaid in proportion to the deferred shares held by them respectively.

(*e*) Any shares issued as fully paid pursuant to the agreement referred to in clause of the accompanying articles of association shall for the purposes of dividend be treated as having been paid up at the date of the incorporation of the company.

(*f*) The rights for the time being attached to the said several classes of shares respectively may be varied or dealt with in the manner mentioned in clause of the accompanying articles of association, but not otherwise, and that clause and also clauses of the articles shall be deemed to be incorporated herein and have effect accordingly.

Upon any increase of capital any new shares may be issued with any preferential or special rights or conditions attached thereto, but so that the rights and privileges mentioned above shall not be altered or modified as regards each class except by an agreement in writing made by some member of that class on behalf of the class and ratified by the holders of at least two-thirds of the shares of that class.

FORM 69.

IV

(1) The capital of the company is Rs. , divided into preference shares of Rs. each, management shares of Rs. each, and ordinary shares of Rs. each, with power to divide the shares in any increased capital into several classes, and to attach thereto respectively any preferential, qualified, special or deferred rights, privileges or conditions.

(2) The said management shares shall confer on the holders for the time being thereof respectively the right to management of the business and the control of the company, and they alone respectively shall be capable of being directors of the company.

(3) Save as provided by clause of the accompanying articles of association in regard to the preference shares aforesaid, the shares in the capital for the time being, other than the management shares, shall not confer on the holders the right to attend or vote, either in person or by proxy, at any general meeting, or to have notice of such meeting, or to have any voice in the management of the business or control of the company or to interfere in such management or control, or to inspect the account books and documents of the company (except as by the law entitled) and such holders shall be bound by the accounts from time to time furnished by the directors and passed at a general meeting.

(4) The said preference shares confer the right to a fixed cumulative preferential dividend at the rate of p. c. p. a. on the capital for the time being paid thereon respectively, and shall have preference as to dividend and capital over the said management shares and the ordinary shares and all other shares in the capital for the time being of the company, but shall not confer any further right to participate in the profits or assets.

(5) The rights and privileges hereby attached to the management shares shall not be altered; they are fundamental. The rights and privileges attached to the said preference shares, and to any shares hereafter created with preferential or special rights attached thereto, shall not be alterable otherwise than pursuant to the provisions contained in clause or of the articles of association which clauses shall, as regards such shares, be deemed to be incorporated herein.

FORM 70.

V

The capital of the company is Rs. 10,00,000 divided into 9,800 ordinary shares of Rs. 100 and 200 founders' shares of Rs. 100 each. The rights following shall be attached to the shares aforesaid *inter se*, that is to say,—

(1) The holders of the founders' shares shall be entitled in proportion to the founders' shares held by them respectively, *first* to five per cent. of the net profits which in each year it shall be determined to distribute by way of dividend, and secondly to five per cent. of the surplus assets of the company which in winding up shall remain after paying off the whole of the paid up capital.

(2) Subject as aforesaid the holders of the ordinary shares shall be entitled to such dividends as it shall be determined to be declared each year out of the remaining net profits and to the remaining surplus assets of the company after repayment of capital.

(3) The holders of the founders' shares shall, in respect thereof be collectively entitled to as many votes as the holders of all the other shares for the time being issued shall be entitled to in respect of such other shares and each of the founders' shares shall confer on the holder thereof a rateable proportion of such votes.

FORM 71.

Power of Attorney from the Company to Manager for general management.

Whereas Limited was incorporated under the Indian Companies Act, 1913 as a Company Limited by Shares: And whereas the Company is desirous of making the appointment as is hereinafter contained. Now these presents witness :—

That the Company hereby appoints Mr. of the Attorney of the Company, to carry on and manage the business of the Company and in the name and on behalf of the Company to do all such acts and things, and to execute all such deeds and instruments, as in the opinion of the said Attorney, may be necessary or convenient for carrying on and transacting the business of the Company. And it is hereby expressly declared that, without prejudice to the general powers herein-before contained, the said Attorney shall have power in the name and on behalf of the Company to do all or any of the following things.

1. To work, manage, develop and turn to account all the properties of the Company.

2. To receive, accept transfer of, demand, sue for, enforce payment of and give receipts and discharges for, all moneys, debts, securities, stocks, shares, dividend, interest and other property now due or belonging, or which may hereafter become due or belong, to the Company whether solely or jointly, with any other company or person.

3. Subject to the consent of the Directors to enter into, make, sign, acknowledge, perfect and do all contracts, conveyances, leases, mortgages, transfers, surrenders, releases, agreements, instruments, acts and things in relation to the business of the Company.

4. To commence, prosecute, defend, compound and abandon all action, suits, claims, demands and proceedings in regard to the property and business of the Company.

5. To compound, adjust, settle, compromise or submit to arbitration any claims, disputes and matters that may arise in connection with the business of the Company.

6. To draw, accept, endorse and negotiate on behalf of the Company all such bills of exchange, promissory notes, hundis, cheques, drafts, Government promissory notes and other Government securities and other instruments as may be necessary, proper or expedient for the carrying on of the Company's business.

7. Subject to the consent of the Directors to operate any banking account opened in the name of the Company and to open and operate any fresh banking account in the Company's name.

8. To vote at the meeting of any other company and to act as the proxy or representative of the Company in respect of any shares of a Company.

9. To appoint or employ on salary, commission or otherwise clerks, officers, peons, servants, agents or other persons, from time to time and dismiss or discharge any such persons.

10. To make investment of the Company's money or funds in such securities as may be approved by the Directors.

Given under the common seal of the Company this day of 19 .

Seal

} Directors.

FORM 72.

Notice of Consent to take the name of an Existing Company.

TO THE REGISTRAR OF JOINT STOCK COMPANIES.

We, the undersigned, being* of Limited, give you notice that the above-named Company is in the course of being dissolved, and hereby, pursuant to section 11, Sub-section 1, of The Indian Companies Act, 1913, and on behalf of the said Company, testify its Consent to the registration of a new Company by the Name of Limited.

Signatures.

Secretary.

Dated the day of 19 .

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* [The "Liquidators" or "two of the Directors" or "Secretary" "duly authorised at a General Meeting held on the day of 19 ."]

FORM 73.

Notice of Situation of the Registered Office or any Change therein.

Limited.

Dated

TO THE REGISTRAR OF JOINT STOCK COMPANIES.

The above-named Company hereby gives you notice, in accordance with section 72 of the Indian Companies Act, 1913, that the Registered Office of the Company is † situated at

[The Number or Name (if any) of the Premises, together with the Street or Road, Town, &c., should be given. This notice must be given within the time mentioned in s. 72].

Secretary.

FORM 74.

Appointing Directors by the subscribers to the memorandum of association.

Limited.

We, the undersigned being (a majority of) the subscribers to the memorandum of association of the above-named Company do hereby in pursuance of article of the articles of association of the Company do hereby appoint the following persons to be the first Director of the Company.

Names.	Addresses.	Descriptions.

Signatures of subscribers {

FORM 75.

Notice of Board Meeting.

Limited.

Registered office

Dated

To

Esq., Director.

Sir,

I beg to inform you that a Meeting of the Directors will be held at on the day of at O'clock in the noon for the transaction of the business specified in the Agenda appended hereto.

Your obedient servant

Secretary.

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† [If there is a change in the situation of the Registered Office put the word "now" here].

FORM 76.

Register of Board Meetings.

Date of meeting.	Names of Directors attended.	Signature.	Amount of fees.	Date of payment.	Remarks.

FORM 77.

Agenda of a Board Meeting.

Limited.

Agenda
of
Board Meeting on the day of 19

1. To resolve that do take the chair.
2. To receive the report that the company has been duly registered.
3. To submit the Company's seal for approval.
4. To pass resolution as to the custody of the keys of the seal.
5. To resolve that be appointed bankers of the Company.
6. To " " " auditors " "
7. " " " " Secretary to the Company at a salary of Rs. per month.
8. To resolve that the vendors' agreement referred to in clause of the Memorandum/Articles of association be adopted.
9. To resolve that directors shall form a quorum for a Board Meeting.
10. To consider the appointment of a sub-committee of the Board.
11. To resolve in accordance with clause of the Articles of Association, that the business of passing transfers, sealing certificates and signing cheques for ordinary current expenses be delegated to a committee of directors.
12. To resolve that such committee be empowered to deal with all urgent matters.
13. To resolve that the prospectus dated a copy of which is signed by each of the Directors be issued forthwith, together with the form of application for shares.
14. To resolve that the common seal be affixed to certificates numbered to inclusive for ordinary/preference shares.
15. To submit transfers numbered to to be examined and passed.

FORM 78.

Minutes of a Board Meeting.

Limited.

Meeting of the Board of Directors held at the registered office of the Company on the day of 19 .

Present—Mr. in the chair.
Mr.
Mr.
Mr.
Directors.

The minutes for the board meeting held on were read and verified and ordered to be signed.

Applications for shares were submitted and approved and it was

Resolved—that the shares applied for be allotted, and the secretary be instructed to send to the applicants notices of allotments forthwith.

The report of the managing director was read and the engagement of Mr. as a at a salary of Rs. per month was approved.

A draft notice convening the statutory general meeting together with a draft statutory report was considered and with some alterations approved and the secretary was directed to comply with the requirements of section 77 of the Indian Companies Act, 1913 and convene the statutory meetings on at o'clock.

Chairman.

FORM 79.

Specimens of resolutions of Board Meetings.

(1)

Resolved—That the common seal, an impression of which is affixed to these minutes, be and is hereby adopted as the common seal of the Company.

FORM 80.

(2)

Resolved—That an account be opened at the Bank, Limited in the name of the Company.

That the said Bank be and is hereby authorized to pay to the debit of such account all cheques drawn upon the same, and all bills, drafts &c., made payable at the said Bank when signed by two of the Directors of the Company and countersigned by the Secretary for the time being.

That a copy of this resolution signed by the Chairman and accompanied by specimens of the signatures of the Directors and Secretary, be forwarded to the Bank.

FORM 81.

(3)

Resolved—That the seal of the Company be affixed to the power of attorney in favour of Messrs. and the certificate of authentication be obtained thereto.

FORM 82.

(4)

Resolved—That an Extraordinary General Meeting of the Company be held on and a resolution be submitted to the members for the increase of the Company's capital by the issue of additional shares of Rs. each.

FORM 83.

Affixing Common Seal to a document.

The Seal of the Company was affixed hereto this day of 19 in the presence of

Director.
Secretary.

FORM 84.

Register of Documents sealed.

Serial No.	Documents Sealed.	Date of Resolution or Order to Seal.	Date of Sealing.	In whose Presence.	Remarks.

FORM 85.

Underwriting Application.

Limited.

Proposed issue of shares of Rs. each, payable as follows :—

To the Directors.

Gentlemen,

I request you to admit me as an underwriter at a commission of per cent. of of the above shares or any less number you think fit, and upon the terms set forth in the within conditions. Be so good as to notify to me your acceptance hereof.

Date

Yours &c.

Usual signature
Name in full
Occupation
Address

I hereby acknowledge notice of your acceptance of the above for shares.

Conditions referred to above :—

1. Applications are to be in the form accompanying or referred to in the prospectus relating to the above issue as finally settled and filed with the Registrar of Companies.

2. Within days of the issuing of the prospectus each underwriter is to apply for the number of shares underwritten by him and every such application must be accompanied by a cheque in favour of the bankers of the Company for the required deposit on such shares.

3. The public subscriptions of the shares received before the closing of the subscription list are to go in relief to the underwriters in proportion to the amounts undertaken by them respectively. Subscriptions by the public withdrawn before allotment and subscriptions rejected by the directors as unsatisfactory, are not to be counted as public subscriptions.

4. Each underwriter is to be paid by the company a commission at the rate of Rs. per cent. on the amount underwritten by him, such commission to be paid within days after the company becomes entitled to commence business.

5. The underwriters are to be relieved altogether unless at least of the said shares are underwritten before the prospectus is published.

6. No underwriter is to effect any sale of shares in the Company, either directly or indirectly, until (at least one month) after the first general allotment of shares has taken place.

7. Any allotment to an underwriter as such must be made within weeks from the date of his application for admission as an underwriter.

To

Sir,

With reference to your request of the inst., we admit you as an underwriter of shares in the above Company, at a commission of p.c., upon the footing and subject to the conditions therein referred to.

Yours &c.

FORM 86.

Underwriting letter.

Limited.

Capital Rs. divided into shares of Rs. each.

To the Directors.

Gentlemen,

With reference to the prospectus of the above Company, and in consideration of your agreeing to pay me/us a commission of per cent. on the nominal value of the shares of the Company in cash/fully paid shares of the Company, I/we hereby undertake to subscribe or find responsible subscribers, within days from the issue of the said prospectus, and on the terms therein stated for shares of Rs. each of the capital of the Company or such less number as you may accept this undertaking for, and to pay the instalments on the dates specified in the said prospectus, and I/we herewith hand you an application for the said shares together with a cheque for Rs. being a deposit of Rs. per share.

I/we shall receive the said commission upon the amount guaranteed by me/us and accepted by you as above-mentioned within days after the Company shall have become entitled to commence business.

This underwriting letter is irrevocable provided that shares are underwritten or applied for prior to the public advertisement of the said prospectus.

Dated the

Usual signature
Name (in full)
Occupation
Address

To
of

Sir,

With reference to your underwriting proposal of the of the Company hereby accepts the same for shares and acknowledges receipt of the cheque for Rs. being the deposit thereon.

Dated } Directors.

I acknowledge notice of your acceptance of the above proposal for shares.

Signature of
Underwriter.

FORM 87.

Sub-Underwriting Letter.

Limited.

Capital Rs. divided into shares of Rs. each.

To of

Dear Sir,

Understanding that you have, for a commission to be paid by the above Company, underwritten of the above shares I hereby propose to sub-underwrite of these shares and send herewith an application for the same together with a cheque for Rs. as deposit of Rs. per share.

My subscription is to be on the terms of the Company's prospectus filed with the Registrar of Companies.

If the said shares in the Company's capital shall be applied for and allotted to the public within days after the issue of the said prospectus I am not to be allotted any shares in respect of any application, but if the whole of the said shares shall not be applied for and allotted within the aforesaid period, all applications made by the public on which allotments are made are to be applied in relief to the sub-underwriters including myself, reteably in proportion to the amount of the shares sub-underwritten by them respectively.

All applications initialled by me and approved by you sent in by me, to the Company prior to the end of the above-mentioned period after the issue of the prospectus are to be applied in further relief of my obligation to subscribe hereunder.

You are within days after you shall have been paid your underwriting commission by the Company, to pay me a commission of per cent. in cash on the nominal amount of shares sub-underwritten by me, such commission to be paid whether I am required to accept any allotment of shares or not, but in case any allotment is made to me you may apply so much of the commission payable to me as may be required for payment of the allotment money.

Usual Signature
Name (in full)
Dated the Occupation
Address

*FORM 88.

(Skeleton prospectus offering shares for subscription)

A copy of this prospectus has been filed with the Registrar of Joint Stock Companies.

PROSPECTUS OF

Limited.

(Incorporated under the Indian Companies Act, 1913 to 1941).

Authorised Capital ... ... Rs.
Divided into *shares of Rs.* *each.*

Issue of shares of which shares will be issued as fully paid up to the Vendors and shares are offered to the public for subscription payable as to :—

Rs. on application. [This must not be less than 5 p. c. of the amount of a share].

Rs. on allotment and the balance as and when required in calls of not more that Rs. per share at intervals of not less than months.

DIRECTORS.

(Names, descriptions and addresses are to be given).

Mr. of [Merchant]
Mr. of [Engineer]
Mr. of
Mr. of

BANKERS.

(Names and addresses).

AUDITORS.

(Names and addresses).

MANAGING AGENTS.

(Names and addresses).

Secretary (Name, occupation and address).

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* This form gives a bare outline of a skeleton prospectus of a small company issuing ordinary shares only. The full prospectus should comply with all the provisions of the amended s. 93 of the Act.

REGISTERED OFFICE.

OBJECTS.

This Company has been formed generally for the purpose of mining, manufacturing and dealing in asbestos and asbestors goods and for the other purposes specified in the Memorandum of Association and particularly for the purpose of acquiring as a going concern the asbestos manufacturing and export business carried on by Messrs. of .

The properties in which the Company has acquired leasehold mining rights are as follows :—

The above properties have been inspected and reported upon by Mr. , a mining engineer, and the above statements are based on his reports which are open to inspection at the office of the Company.

The Company has also acquired the goodwill of the said business of Messrs. and the benefit of all pending contracts for the sale of asbestos and all the plant, machinery, tools, fixtures, furniture, bungalows, godowns, and buildings connected with the said business and mines. The pending contracts taken over by the Company amount to about Rs. , and the profits derived from the same will be for the benefit of the Company.

The properties have been worked during the last few years by the Vendors and excellent results have been obtained. They have established good connections in Europe and America for disposal of their asbestos and the volume of their business may be gauged from the fact that in 19 their total export and local sales were Rs. and in 19 Rs. .

The mines, mining rights, business, and other assets above mentioned are being acquired by the Company for a total sum Rs. of which only Rs. is being paid in cash and the balance of Rs. . is being satisfied by the issue to the Vendors or their nominees of fully paid up shares. The proportion of the purchase money attributable to goodwill is Rs. . As regards Rs. part of the purchase price which is being satisfied in shares, the Vendors have agreed that they will hold such shares during their lives subject to the provision that after 5 years from the incorporation of the Company they may sell half thereof with the written consent of the Company.

Uses of asbestos— [Here state important uses].

Prospects—[Here show by statistics &c., that the Company can reasonably expect to make substantial profits in the business].

Messrs. the Managing Agents of the Company, are

As the Company is taking over a well established and profitable going concern it should be in a position to pay a substantial dividend in the near future.

Directors' Qualification, Remuneration, etc.—The qualification of a Director is the holding of shares of the nominal valu of Rs. in the capital of the Company.

The remuneration of a Director is Rs. for each meeting attended, a Commission of on the net yearly profits of the Company after deducting interest on debentures or other moneys borrowed but before placing anything to reserve, depreciation or other special account and before deducting the commission payable to the Managing Agents and such commission is to be divided among the Directors equally or as they may determine.

Managing Agents' remuneration etc.—[Here state provision in the articles or in any contract as to the appointment of the managing agents and the remuneration payable to them (see s. 87 C)].

[It the issue of shares is under-written, comply with s. 93 (1) (ee).

Minimum Subscription—The minimum subscription on which the Directors may proceed to allotment is % of the shares offered to the public for subscription [see s. 101].

Contracts.—The following contracts have been or will be adopted by the Company :—

An Agreement dated 19 and made between of the first part and & Co., of the 2nd part whereby the parties of the 1st part agree to sell to the Company their business and their rights in the lands referred to above in consideration of the sum of Rs.

which is to be satisfied as to Rs. in cash and as to Rs. by the issue to the Vendors of ordinary shares of Rs. each credited as fully paid up.

The following contract will be entered into by the Company :—

An Agreement between the Company and Messrs. & Co., whereby the latter are appointed Managing Agents of the Company for a term of 20 years (unless they previously resign the office) on a remuneration of a commission of 10% on the net yearly profits of the Company after deducting interest on debentures or other loans but before taking anything to reserve, depreciation or other special accounts, and in the case of absence or inadequacy of profits a minimum payment of Rs. per month together with an office allowance of Rs. per month.

[Here comply with s. 93 (1) (ff)].

Preliminary Expenses.—The preliminary expenses in connection with the formation of the Company will be paid by the Company and are estimated to amount to not more than Rs.

Miscellaneous.—No promotion money is being paid by the Company but the articles provide for the payment of underwriting commission not exceeding per cent.

Mr. one of the Directors, is interested in the promotion of the Company as being a partner in the firm of Messrs. & Co., the Managing Agents of the Company. [Here comply with s. 93 (1) (n)].

Copies of the Memorandum and Articles of Association of the Company and of the Agreements above mentioned may be inspected at the office of the Company during the usual business hours.

A copy of the Memorandum of Association is anueexed to and forms part of this Prorpectus.

Application for Shares. Application for shares should be made on the accompanying form and sent to any one of the following Banks :—

Or to the Managing Agents Messrs. & Co., at together with Rs. per share the amount payable on application.

If no allotment is made the deposit will be returned in full. If the number of shares allotted is less than the number applied for, the surplus deposit will be credited in reduction of the amount payable on allotment.

Failure to pay any future instalment on the shares allotted when due may render all previous payments liable to forfeiture.

Brokerage will be paid at the rate of % for all applications made through Brokers. [Here comply with s. 93 (1) (h)].

Copies of this Prospectus and forms of application for shares may be obtained from the Company's Managing Agents.

Dated this day of 19 .

[Here give the names of Directors who have signed this prospectus].

[A copy of the memorandum of association should be attached to the prospectus, see s. 93 (1) (a), and the form of application for shares should also be given ; see the amended s. 96].

FORM 89.

APPLICATION FOR SHARES.

(When deposit money is paid direct to the Company.)

Limited.

To the Directors of

Gentlemen,

I hereby request you to allot to me Shares of Rs. each in the above-named Company; and I agree to accept such Shares, or any smaller number you may allot to me, subject to the provisions of the Memorandum and Articles of Association. I send herewith the sum of Rs. by cheque/postal money order being a deposit of Rs. per Share, and I agree to pay the balance as and when it may be called up, and I authorize you to place my name on the Register of Members in respect of the Shares so allotted.

Usual signature
Name (in full)
Address
Occupation

Dated the *of* 19

Limited.

RECEIPT FOR AMOUNT PAID ON APPLICATION.

(To be retained by the Applicant.)

Received this *day of* 19 .
from Mr.
the Sum of *Rupees*
being a deposit of Rs. *per Share payable on Application for*
Shares of Rs. *each in the above-named Company.*
For

Rs. ....

FORM 90.

APPLICATION FOR SHARES.

(When deposit money is paid to the Company's Bankers).

To the Directors of Limited

Gentlemen,

Having paid to the Company's Bankers Limited the sum of Rs. being a deposit of Rs. per share on ordinary/preference shares in the above-named Company, I request you to allot to me that number of shares upon the terms of the Company's prospectus dated and I hereby agree to accept the same or any smaller number of shares that may be allotted to me, and pay the balance as and when it may be due as provided by the said prospectus ; and I authorize you to place my name on the Register of Members in respect of the shares so allotted.

Usual signature
Name (in full)
Address
Occupation

Dated

Limited.

Banker's Receipt (to be retained by the Applicant).

Received this day of 19 . from Mr. the sum of Rs. being a deposit of Rs. per share upon shares in the above-named Company.
Rs.

For Bank.

FORM 91.

(*Letter of regret.*)

Limited.

19

Sir (or Madam),

With reference to your application for shares in the above-named Company, I regret to say that, owing to the large subscription for the same, the Directors have been unable to make any allotment to you. I enclose herewith a cheque on the Company's Bankers for Rs. , the amount of the deposit paid by you.

Yours faithfully,

Secretary.

Limited

19

To The *Bank Limited.*

Pay to the Order of

the sum of Rs. *the amount of deposit paid on application for shares of the Company not allotted.*

Rs.

.... }
.... } Directors.

Secretary.

Signature of Payee.

FORM 92.

Letter of Allotment of Ordinary shares.

Limited.

Allotment No.

Date of Allotment 19 .

Date of Posting 19 .

Name of Allottee

Address

Occupation

Number of shares applied for

Number of shares allotted

Amount Payable : Rs.

When due 19 .

When Paid 19 .

Distinctive number of shares allotted.

Date when Allotment Letter exchanged for Share Certificate.

Folio in Register of Members .

This portion to be retained by the Bankers or Secretary.

No. 19 .

To

Herewith I beg to send you the Sum of *Rupees being the amount payable on Allotment of* *Shares in*

Name of Allottee

Address

Rs.

Limited.

No. 19 .

Dear Sir (or Madam),

Pursuant to your application for *Shares in the above Company I am instructed to inform you that there have been allotted to you* *Ordinary Shares of Rs.* *each and I have to request that you will be good enough, on or before the* *day of* 19 *to pay to the Company the sum of Rs.* *being the amount of Rs.* *per Share payable on Allotment of the said Shares.*

Please retain this Letter of Allotment, and the Receipt for the amount payable as above, to be exchanged for your Share Certificate which will be ready shortly.

Yours faithfully,

To

Secretary.

RECEIPT.

19 .

Received of Mr. *the sum of Rs.* *being the amount payable on Allotment of the above-mentioned Shares.*

Ry.

This form to be sent Entire to the Bankers or the Company with Remittance for the amount payable. The Letter of Allotment and the Receipt will be returned to the Allottee.

FORM 93.

Letter of Allotment of Preference Shares.

Limited.

Issue of Preference Shares of Rs. each.

Letter of Allotment

No. Dated.

To Esq.

Dear Sir/Madam,

Pursuant to your application for Preference Shares in the above-named Company, I beg to inform you that the Directors have allotted to you such shares of Rs. each, and I have to request that you will be good enough, on or before the day of 19 to pay the sum of Rs. being the amount of Rs. per share payable on allotment of the said shares. The balance Rs. will be payable by instalments as follows:

[Here set out the instalments.]

This letter of allotment and the receipt are to be exchanged for your Share Certificate which will be ready shortly

Secretary.

……

Receipt.

Received of Esq. the sum of Rupees being the amount payable on allotment of the above-mentioned shares.

Rs.

……

[This portion to be retained by the Bankers or Secretary.]

No.

To Limited [Company or Bank].

Herewith I beg to send you the sum of Rs. (Rupees) being the amount payable on allotment of shares in Limited.

Rs. Name of Allottee

Address

FORM 94.

Letter of Allotment of fully paid up Shares.

Limited.

Dated

Dear Sir,

In accordance with the Agreement dated made between yourself and the above Company the Directors have by a resolution passed on of 19 allotted to you fully paid up shares of this Company numbered to inclusive.

Please communicate your acceptance to the undersigned.

Yours faithfully,

[To be exchanged for share certificate].

Secretary.

FORM 95.

Notice that Share Certificate is ready.

Limited.

Dated

Sir,

I am to inform you that the Certificates for ordinary/preference shares in this Company will be ready on or after , 19 and will be delivered to you or your authorized agent between the hours of twelve to three in exchange for allotment letters and banker's receipts. You may authorize me to send the Certificate to you by post at your risk.

Yours &c.

Secretary.

FORM 96.

No.

CERTIFICATE.

for

ORDINARY SHARES.

Numbered *to*

Issued to

of

Dated 19

Entered in Register of members

Folio

Received the above-mentioned Certificate

on

Member.

No.

SHARE CERTIFICATE.

Limited.

This is to Certify *that*

of

is the Registered Proprietor of

Ordinary Shares of *Rupees* *each*

numbered *to* *inclusive in the*

above-named Company subject to the Memorandum and the Articles of

Association thereof and there has been paid in respect of each of such

Shares the sum of *Rupees.*

Given *under the Common Seal of the said Company*

the *day of* 19

Common Seal

} **Directors.**

Secretary.

N. B.—*No transfer of any of the above-named Shares will be registered without production of this Certificate.*

FORM 97.

STOCK CERTIFICATE.

No.

Rs.

Limited.

Date of Certificate

Name

Address

Occupation

Date of Delivery

Secretary.

No.

Rs.

Limited.

This is to Certify *that Mr.*

of *is the registered holder of Rs.*

Stock of the above-named Company subject to the Memorandum and Articles of Association thereof.

Given *under the Common Seal of the Company the*

day of 19 .

Common
Seal

} **Directors.**

Secretary.

N. B.—*No transfer of this Stock will be registered unless this Certificate is surrendered.*

FORM 98.

Notice under sec. 102 Avoiding Allotment.

Limited.

To the Directors.

Gentlemen,

Take notice that I, the undersigned, do hereby avoid pursuant to Section 102 of the Indian Companies Act, 1913 the allotment of Shares in the capital of the Company made to me by your allotment letter No. dated , and I request you to remove my name from the Register of Members in respect of the said Shares.

I further request you to pay me back Rs. paid by me in respect of the said Shares with interest at seven per cent. per annum as from the time of payment by me.

I reserve my right to proceed against the Directors personally for compensation for any loss or damage I have sustained for your contravention of the provisions of section 101 of the aforesaid Act.

[This notice should be sent within one month after the holding of the Statutory Meeting ; see S. 102 (1)].

FORM 99.

Advertisement as to lost Share Certificate.

Limited.

Application has been received by the above-named Company for issuing to a new certificate of shares in the Company, upon the statement that the original certificate No. dated has been lost/destroyed. Notice is hereby given that if within two weeks from the date hereof no claim or representation is made in respect of the said original certificate to the Directors they will proceed to deal with the aforesaid application for new share certificate.

Registered Office

Date

Secretary.

FORM 100.

Letter of Indemnity for issue of New Share Certificate.

To the Directors of

Limited.

Gentlemen,

The Original Certificate for Shares, numbered to , in the above-named Company issued to me having been lost, mislaid, or destroyed, I request you to issue to me a new Certificate for the said Shares ; and in the event of any claim being made on the Company or its Directors in respect of the said lost, mislaid, or destroyed Certificate, or by reason of the same being hereafter found to be in existence, I hereby agree to idemnify you against all actions proceedings, claims, and demands which may be brought or made against the said Company and its Directors in consequence of your having issued such New Certificate.

Dated this day of 19 .

Signature of Shareholder

Address

Witness

FORM 101.

Notice of Call.

LIMITED

No.

Date of Call , 19 .

Amount of Call per Share.

Shares Nos. to

Name of Member

Address

Aggregate Amount : Rs.

When due : 19

When paid : 19

Date of Posting : 19

Where Posted :

Folio in Register of Members

NOTICE OF CALL OF PER SHARE.

No. *Shares Nos.* to . Limited.

Registered Office

19 .

Dear Sir (or Madam),

I beg to give you notice that a meeting of the Directors of this Company held on the day of , 19 , it was resolved that a Call of Rs. per Share be made upon the Members in respect of the moneys unpaid on their Shares, payable on or before the 19 ; and I have to request that you will, on or before that day, pay the Sum of Rs. (being the amount of such Call payable on the Shares registered in your name in the Books of the Company) to at

Yours faithfully,

Secretary.

To

RECEIPT.

19 .

Received of the sum of , being the amount payable on a Call of per Share, as above stated

For

Rs.

FORM 102.

Register of Calls.

……Call of Rs. per Share Call made on Payable on

Serial Number.	Folio in Register of Members.	Names of Members.	No. of Share.	Amount Due.	Date of Payment.	Remarks.

FORM 103.

Notice before forfeiture for non-payment of Call money.

Limited.

Dated

Dear Sir,

In my letter dated I gave you notice that at a meeting of the Directors held on a Call of Rs. was made on your Shares in the above-named Company.

I am now instructed to inform you that the Directors ask you to pay the said sum of Rs. on or before day of 19 together with interest thereon at the rate of per cent. per annum from the day of 19 to the date of payment, and that in the event of non-payment of the said call and interest on or before day 19 at the Shares in respect of which such call was made will be liable to be forfeited.

To Esq. Yours faithfully

Secretary.

FORM 104.

Application and Allotment Book.

Application.

1	2	3	4	5	6	7
No. of Application.	Date of Application.	Name.	Address.	Occupatoin.	Number of Shares Applied for.	Amount of Deposit.

Allotment.

8	9	10	11		12	13	14	15	16	17	18
No. of Allotment Letter.	Date of Allotment.	Number of Shares Allotted.	Distinctive Numbers.		Amount Payable on Allotment.	When Paid.	Total due on Shares Allotted.	Amount Returnable.	Folio in Register of Members.	No. of Share Certificate.	Remarks.
			From	To							

FORM 105.

Register of Members & Share Ledger.

Name
Address
Date at which entered as a Member

Occupation.
Date at which ceased to be a Member

Shares Acquired.							Cash payable on Shares.		Cash paid on Shares.			Shares Transferred.							Balance of Shares Held.	Remarks.
No. of Allotment or Transfer.	Date of Allotment or Entry of Transfer.	Number of Shares Alloted or Transferred.	Numbers inclusive.		Transferor's Folio.	Nominal value of Shares Acquired.	On what Account (allotment or call &c.)	Date when Due.	Date of Payment.	Cash Book Folio.	Amount Paid.	No. of Transfer.	Date of Entry of Transfer.	Number of Shares Transferred.	Numbers inclusive.		Transferor's Folio.	Total value of Shares Transferred.		
			From	To											From	To				

FORM 106.

Register of Debenture-holders.

Name
Address
Occupation

Debentures Acquired.							Debentures Transferred.						
Date of Allotment or Registration of Transfer.	No. of Instrument of Transfer if so Acquired.	From whom Acquired.	Transferor's Folio in this Book.	Distinctive Numbers of Bonds.	Total Number of Bonds.	Total value.	No. of Instrument of Transfer.	Date of Registration of Transfer.	To whom Transferred.	Transferee's Folio in this Book.	Distinctive Numbers Transferred.	Total value Transferred.	Balance Held.

FORM 107.

Notice of the Statutory Meeting.

Limited.

Registered Office
Dated

Notice is hereby given that pursuant to S. 77 of the Indian Companies Act, 1913, the Statutory Meeting of the Members of the above Company will be held at the Registered Office as above on the day of at O'clock in the -noon.

A copy of the Report required to be sent under the above section is annexed hereto.

By order of the Board

To

Secretary.

FORM 108.

Minutes of the Statutory Meeting.

The first General or Statutory Meeting of the Company held at on .

Present :—

} Directors.

} Shareholders.

On the motion of Mr. seconded by Mr. Mr. was voted to the chair.

The Statutory Report was with the consent of the Meeting taken as read.

The chairman directed the attention of the meeting to the fact that a list of shareholders of the Company was placed on the table and would remain open to their inspection during the continuance of the meeting.

The chairman made a statement on the Company's position and prospects and invited discussion on any matters relating to the formation of the Company or arising out of the statutory report.

After answering the questions asked by some of the members a discussion arose respecting the formation of the Company in which Messrs. members took part; on the conclusion of which, as there was no business to transact, the meeting closed with a vote of thanks to the chairman.

FORM 109.

Share Warrant to Bearer with Dividend Coupons.

Share Warrant No. *Numbers of Shares*

The Limited.

Share Warrant to Bearer.

This is to Certify that the Bearer of this Warrant is the Proprietor of Fully Paid Shares of Rupees each, numbered as above, in the Capital of The , Limited, subject to the Memorandum and Articles of Association of the Company for the time being and the Conditions endorsed hereon.

Given under the Common Seal of the Company this day of 19

} *Directors.*

Secretary.

Warrant No.

Voucher for fresh supply of Coupons for Share Warrant to Bearer.

The Bearer of the above Warrant will receive in exchange for this Voucher a fresh supply of Coupons when those below have all fallen due.

....

The Limited.

Warrant No. 6.
Dividend Coupon on Shares. Payable according to Advertisement to be issued by the Company.

The Limited.

Warrant No. 5.
Dividend Coupon on Shares. Payable according to Advertisement to be issued by the Company.

The Limited.

Warrant No. 4.
Dividend Coupon on Shares. Payable according to Advertisement to be issued by the Company.

The Limited.

Warrant No. 3.
Dividend Coupon on Shares. Payable according to Advertisement to be issued by the Company.

The Limited.

Warrant No. 2.
Dividend Coupon on Shares. Payable according to Advertisement to be issued by the Company.

The Limited.

Warrant No. 1.
Dividend Coupon on Shares. Payable according to Advertisemet to be issued by the Company.

FORM 110.

Notice of Consolidation of Share Capital.

Limited.

To the Registrar of Companies,

Limited hereby gives you notice pursuant to S. 51 of the Indian Companies Act, 1913 that the 2,000 Ordinary Shares of Rs. 50 each of this Company numbered to have been consolidated into 1,000 Ordinary Shares of Rs. 100 each numbered to

Dated

(Signature)

Secretary.

FORM 111.

Notice of Conversion of Share-Capital into Stock.

Limited.

To the Registrar of Companies,

Limited hereby gives you notice pursuant to S. 51 of the Indian Companies Act, 1913 that 5,000 Ordinary Shares of this Company of Rs. 10 each numbered to have been converted into Rs. 50,000 Stock.

Date

(Signature)

Secretary.

FORM 112.

Notice of Increase of Share Capital.

Limited.

To the Registrar of Companies,

Limited hereby gives you notice pursuant to S. 53 of the Indian Companies Act, 1913 that by *resolution of the Company dated the nominal Capital of the Company has been increased by the addition thereto of the sum of Rs. beyond the registered capital of Rs.

The additional capital is divided as follows :—

Number of Shares.	Class of shares.	Nominal Amount of each Share.	Conditions on which issued.

Dated

(Signature)

Secretary.

---

* Here state—ordinary, extraordinary or special.

FORM 113.

Notice of Increase in Number of Members.

Limited.

To the Registrar of Companies,
Limited hereby gives you notice pursuant to S. 53 of the Indian Companies Act, 1913 that by resolution of the Company dated the number of members in the Company has been increased by the addition of members beyond the present registered number of members.

Dated

(Signature)

Secretary.

FORM 114.

Instrument of Transfer of Shares.

Transfer No.

I/We
of
in consideration of the sum of Rupees.
paid to me/us by
of
(hereinafter called "the said Transferee "), do hereby bargain, sell, assign, and transfer to the said Transferee Shares of each, Rs. paid up, numbered
to inclusive
in the Limited.
To hold unto the said Transferee, his/her Executors, Administrators, and Assigns, subject to the several conditions on which he/she held the same at the time of the execution hereof; and , the said Transferee , do hereby agree to accept and take the said Shares subject to the conditions aforesaid.
As witness our Hands this day of 19 .

Signed, by the above-named
in the presence of

Witness to sign here.
Signature
Address
Occupation

Signature of Transferee.

Signed by the above-named
in the presence of

Witness to sign here.
Signature
Address
Occupation

Signature of Transferor.

FORM 115.

Receipt for Instrument of Transfer and Share Certificate.

Limited.

No.

Date 19 .

Received from

Share Certificate No. for Shares,

numbered to , and Instrument of Transfer

From	To	No. of Shares.	Numbered	
			From	To

Certificate ready for delivery 19 .

Fee paid

Limited.

No.

Date 19 .

Received from

Share Certificate No. for Shares,

numbered to , and Instrument of Transfer

From	To	No. of Shares.	Numbered	
			From	To

The Certificate in respect of the above Transfer will be ready for delivery in exchange for this Receipt on the 19 .

Secretary.

Fee paid

FORM 116.

Balance Receipt.

LIMITED.

BALANCE RECEIPT.

No. 19

No. of Old Certificate

Name of Shareholder

No. of Shares on Balance Certificate

Inclusive Number to

Issued to

LIMITED.

BALANCE RECEIPT.

No. 19

Issued in respect of Shares of Rs. each in the above-named Company, numbered to in the name of

which are included in Certificate No. deposited in the Company's Office.

Secretary.

NOTE.—Should a new Certificate be required, it will be prepared on notice to that effect being received, and will be delivered in exchange for this Receipt.

FORM 117.

Notice to Shareholder before registering Transfer.

LIMITED.

Dated

Dear Sir,

I beg to inform you that an Instrument of Transfer purporting to be signed by you and transferring shares numbered to inclusive of this Company now standing in your name has been lodged at this office for registration.

Unless I hear from you to the contrary by return of post, it will be assumed that the matter is in order and the Instrument of Transfer will be dealt with by the Directors in the usual way.

Yours faithfully,

Secretary.

FORM 118.

Register of Transfers of Shares.

Limited.

No.	Date of Registration.	Transferor's Name and Address.	Register Folio.	No. of Shares.	Distinctive Numbers.		No. of Old Certificate.	Transferee's Name, Address and Occupation.	Register Folio.	No. of New Certificate.	Class.	Remarks.
					From	To						

FORM 119.

Application by Executors or Administrators of a deceased Shareholder to be registered in place of the latter.

Limited.

To the Directors.

Gentlemen,

We the undersigned being the executors of the last will (*or* administrators of the estate) of deceased of which probate (*or* letters of administration) was/were duly granted to us on the day of 19 hereby request you to register us as members of the above Company in respect of the shares numbered to inclusive now standing in the name of the aforesaid deceased in the register of members of the above Company.

Dated

Address

Signature.

FORM 120.

Notice of the Ordinary General Meeting.

Limited.

Registered Office
Dated

Notice is hereby given that the Ordinary General Meeting of the Members of the above Company will be held at on the day of at O'clock in the -noon, for the following purposes :—

To receive and consider the Directors' Report and the audited Balance-sheet and Profit & Loss Account for the year ended ;

To sanction the declaration of a Dividend ;

To elect Directors in place of Messrs. Directors retiring by rotation ;

To elect Auditors for the year ending 19 ;

To transact the other ordinary business of the Company.

By order of the Board

To

Secretary.

N. B. The transfer books of the Company will be closed from the to the 19 both days inclusive.

FORM 121.

Agenda paper of Ordinary General Meeting with the Chairman's or Secretary's notes.

Limited.

Agenda of Ordinary General Meeting of the Company held on day of 19 at the Company's registered office.

Present :—

1. A. B.
2. C. D. by his proxy E. F. of &c. &c.
3. G. H. (Chairman of the Board of Directors)
4. I. G. (Director)
5. K. L. (Secretary)

&c. &c.

	Members.
	Mr. took the chair.
Read notice convening the meeting.	Read by Secretary.
Submit Directors' Report & Audited Balance-sheet &c. for the year ended .	On motion of Chairman seconded by Mr. Approved & adopted.
Move Resolution declaring dividend.	Moved by Mr. seconded by Mr. Resolution declaring dividend at per cent. Carried unanimously.
Propose Mr. and Mr. be re-elected Directors.	Moved by Mr. seconded by Mr. Resolution carried by majority.
Move Resolution re-appointing the Auditors.	Moved by Mr. seconded by Mr. Resolution carried unanimously.

Initial of Chairman.
„ „ Secretary.

FORM 122.

Minutes of an Ordinary General Meeting.

Limited.

The Ordinary General Meeting of the Company held at on at O'clock in the -noon.

Present:— Mr.
„ } Directors.

Mr.
„ } Shareholders.

On the motion of Mr. seconded by Mr. Mr. was voted to the chair.

The Notice convening the meeting and the Auditors' Report were read. The Directors' Report and the Balance-sheet and Profit & Loss Account were taken as read.

The chairman invited questions arising out of the Directors' Report and the audited Balance-sheet, which were answered by the chairman.

On the motion of the chairman seconded by Mr. it was unanimously

Resolved—that the Report and the Accounts for the year ended 19 as audited and certified by the Company's Auditors, be approved and adopted.

On the motion of the chairman seconded by Mr. it was unanimously

Resolved—that the dividends recommended by theDirectors in their Report, viz., per cent. on the preference shares and per cent. on the ordinary shares be declared and that the dividends be paid to those members whose names appeared on the Register of Members at the date of the closing of the books on 19 .

On the motion of Mr. seconded by Mr. it was

Resolved—that Mr. and Mr. the Directors retiring by rotation, be re-elected.

On the motion of Mr. seconded by Mr. it was unanimously

Resolved—that Messrs. be re-elected Auditors of the Company for the year ending 19 at a remuneration of Rs.

The meeting then terminated with a vote of thanks to the chair and the board.

Chairman.

FORM 123.

Dividend Notice and Warrant.

Limited.

19 .

No.

This Half Sheet is to be retained by you. The Warrant requires your Signature at foot.

Sir,

Pursuant to the Resolution passed at the Board Meeting held on the I have the pleasure to forward you a Dividend Warrant, being Dividend at the rate of per cent. (per Share) for the Year ended the last, payable on and after the

		Rs.	As.	P.
Dividend on	Shares			
of each				
Less Income Tax at	in the Rupee			

I hereby certify that the amount stated herein has been deducted for Income Tax, and will be duly paid by me to the Central Government.

Your obedient Servant,

To

Secretary.

……

Limited.

Warrant for Dividend for the Year ended 19 .

No.

To Bank Limited.

Pay to the Order of

the Sum of

Rs.

Payee's Signature

} Directors.

Secretary.

This Draft must be signed by the payee and presented within two months from date.

FORM 124.

Dividend Warrant with Income-Tax Certificate.

Limited.

Registered Office.

Dated

Warrant for Rs. (Rupees), being dividend at the rate of Rs. (Rupees) per share for the year/half year the period from to during the year ending on the day of 19 , free of income-tax on shares in this Company, registered during the said period on (Date) in the name of . This dividend was declared at the ordinary general meeting held on the day of 19

I/We hereby certify that income-tax on the entire/such part as is liable to be charged to Indian Income-tax of the profits and gains of the Company, of which this dividend forms a part, has been, or will be, duly paid by me/us to the Central Government.

Signature

Office

(To be signed by the claimant).

I hereby certify that the dividend above mentioned relates to shares which were my own property at the time when the dividend was declared during the period from to on (Date) and were in the possession of

Signature

Date

FORM 125.

Income-tax Certificate for paying Interest on Debentures.

The certificate * to be furnished under section 18 (9) of the Income-Tax Act by the person paying any interest on debentures or other securities for money issued by or on behalf of a Company shall be on the following form :—

Limited.

Registered Office

To

(owner of security)

of

I/We hereby certify that Rs. being income-tax at the rate of pies per rupee has been deducted from Rs. being the amount of interest at the rate of per cent. per annum due † on debentures Nos. of Rs. each of the above-named Company and that it has been or will, within the prescribed period, be paid by me/us to the Central Government at

Principal Officer of the Company.

(Date)

(To be signed by the claimant)

I hereby declare that the securities on which interest as above specified has been received, were my own property and were in the possession of at the time when income-tax was deducted.

Signature

(Date)

---

* In the case of bearer debentures or bonds a certificate under section 18 (9) shall only be given if the recipient of the interest declares the name and address of the real owner of the security at the time of receiving the interest.

† The date on which interest is payable.

FORM 126.

Dividend Book.

Limited.

Serial Numbers.	Folio in Register of Members.	Name.	Address.	Number of Shares.	Amount of Dividend.			Income Tax Deducted.			Net Amount Payable.			How Paid.	Warrant Number.	Date of Payment.	Remarks.
					Rs.	As.	P.	Rs.	As.	P.	Rs.	As.	P.				

FORM 127.

Notice of an Extraordinary General Meeting.

Limited.

Registered Office

Dated

Notice is hereby given that an Extraordinary General Meeting of the Members of the above Company will be held at on the day of at O'clock, for the purpose of considering, and if thought fit passing, the following Resolutions, either with or without modification.

1. "That
2. "That

By order of the Board

Secretary.

To

N. B. If you are unable to attend the Meeting personally, please fill up the accompanying form of proxy with the name of one of the Directors, or of any Member of the Company whom you think fit to appoint as your Proxy. Please sign the proxy form on a revenue stamp of two annas in the presence of a Witness, who must also sign, and return the form to the Secretary on or before the

FORM 128.

Notice of an Extraordinary General Meeting for passing an Extraordinary Resolution.

Limited.

Registered Office

Dated

To

of

Notice is hereby given that an Extraordinary General Meeting of the above-named Company will be held at the Registered Office of the Company on the day 19 at O'clock in the -noon when the under-mentioned Resolution will be proposed as an Extraordinary Resolution :—

"That

By order of the Board

Secretary.

FORM 129.

Notice of Meeting to pass a Special Resolution.

Limited.

Registered Office
Dated

To

of

Notice is hereby given that an Extraordinary General Meeting of the above-named Company will be held at the Registered Office of the Company on day of 19 at O'clock in the -noon when the under-mentioned Resolution will be proposed as a Special Resolution.

"That

By order of the Board

Secretary.

FORM 130.

Form of Proxy.

Limited.

I of , being a member of the above-named Company hereby appoint as my Proxy, to vote for me and on my behalf at the* General Meeting of the Company to be held on the day of , 19 . and at any adjournment thereof

Signed this day of , 19 .

Signature

Stamp
of
two annas.

Witness to the above Signature—

*Ordinary or Extraordinary *as the case may be.*

FORM 131.

Demand for a Poll.

Limited.

To the Chairman,

We the undersigned members of the above-named Company, holding shares, do hereby demand a Poll upon the following Resolutions put to the vote, namely: "That ".

FORM 132.

List of Members &c., in taking a Poll.

Names of Members.	Number of Shares Held.	Number of votes entitled to.	Remarks.	Votes given.	
				For	Against
A.B.C.	50	50	Votes rejected under Cl. of the Articles.	—	—
D.E.F.	100	100		100	—
G.H.I.	20	20	Votes given by his Proxy Mr.	—	20
J.K.L.	30	30	Votes rejected under Cl. of the Articles.	—	—

FORM 133.

Requisition to call an Extraordinary General Meeting.

Limited.

To the Directors of

Dated

We the undersigned Members of the Limited holding in the aggregate Shares in the capital thereof, do hereby in pursuance of S.78 of the Indian Companies Act, 1913, require you to convene an Extraordinary General Meeting of the said Company to be held on day of 19 , at O' clock in the -noon, for the purpose of considering, and if thought fit passing, the following Resolution, namely :—

"That

Signatures

1. (holder of Shares numbered to)
2. " " "
3. " " "

FORM 134.

Special Resolution for converting a private Company into a Public Company.

(a) That articles be deleted [i.e., articles limiting the membership to fifty, prohibiting the issue of shares and debentures to the public and restricting transfers].

(b) That the following article be added :—

"For the purposes of the Indian Companies Act, 1913 the minimum subscription on which the Company may proceed to allotment is Shares.

FORM 135.

Extraordinary Resolution.

Limited.

At an Extraordinary General Meeting of the above-named Company duly convened and held at on the day of 19 , the following Extraordinary Resolution/s was/were duly passed :

Resolved—That.

FORM 136.

Form of Special Resolution.

Limited.

At an Extraordinary General Meeting of the above-named Company, duly convened, and held at on the day of 19 , the following Special Resolution/s was/were duly passed :—

Resolved—That

FORM 137.

Specimen of a Special Resolution.

Resolved—That the capital of the Company be Rs. 2,00,000 divided into 20,000 shares of Rs. 10 each, in lieu of 4000 shares of Rs. 50 each and that five shares of the new denomination credited with Rs. 10 per share paid up be issued in exchange for each one of the old shares credited with Rs. 50 paid up.

FORM 138.

Filling a Special Resolution with the Registrar of Companies.

Presented for filing by

Limited.

At an Extraordinary General Meeting of the above-named Company, duly convened and held at on the day of 19 the following Special Resolution was duly passed :—

[Here set out the Resolution as passed]

Chairman.

FORM 139.

Skeleton Prospectus offering Debentures for Subscription.

[This Prospectus has been filed with the Registrar of Companies.]

The

Limited.

Authorized share capital—Rs. divided inio shares of Rs. each.

Issued „ „ Rs.

Subscribed and paid up Rs. (shares on which Rs. per share)

Issue of per cent. Debentures of Rs. 100 each, Payable as follows :—

On application—Rs. 25/- per debenture.

On allotment— Rs. 25/- „ „

On 1st call— Rs. 25/- „ „

On 2nd call— Rs. 25/- „ „

The Debentures will be secured by a floating charge on the Company's undertaking, property and assets including its uncalled share capital. The Debentures will carry interest at the rate of per cent. per annum payable half-yearly on the day of and the day of , the first half-year's interest being calculated on the instalments as from their due dates of payment. The Debentures will be payable to the registered holder, and will be transferable by duly registered transfer in the prescribed form.

PROSPECTUS.

The company was incorporated under the Indian Companies Act, 1913 for the purpose of [here state the company's position and prospects].

The money to be raised by the issue of the Debentures now offered for subscription is required for [here state the purpose].

The security for the Debentures will be as follows :

[Here state the security].

The property, assets and uncalled capital of the company stand in the company's books at Rs. [here give amounts on each head].

The profits of the company as appear on the duly audited blance-sheets and the profit and loss accounts during the last three years are as follows :—[here set out].

In the year the sum of Rs. was paid as commission for placing the shares of the company at the rate of per cent.

Underwriting commission is being paid at Rs. per cent. in respect of the present issue of Debentures.

[Here set out the other requirements from Form No. 85 (prospectus)].

A copy of the company's memorandum of association is annexed hereto.

Provisional certificates will be issued on payments of the amount due on allotment, and exchanged for Debentures on completion of the payments.

Where no allotment is made the deposit will be returned in full, and in the case a less number of Debentures is allotted than is applied for, the excess of the deposit will be applied towards payment of the amount payable on allotment, and the balance (if any) will be returned. Failure to pay any instalment when due will render the allotment liable to cancellation and the previous payments to forfeiture.

The draft of the proposed Debentures may be seen at the company's office, namely, and the applicants will be deemed to have notice of the contents thereof.

Address
Date

Signatures of Directors.

Application Form [as in Form No. 137].

FORM 140.

Form of Application for Debentures.

Gentlemen,

Herewith I beg to hand you the sum of being Rs. per Debenture on application for Debentures of Rupees each in the above-named Company; and I hereby request you to allot me that number of Debentures, which, or any smaller number that may be allotted to me, I agree to take on the terms of your prospectus dated and to pay the balance in respect of the said Debentures as it may become due.

Name (in full)
Address
Profession or Occupation
Usual Signature
Date 19 .

To the Directors of LIMITED.

Limited

RECEIPT FOR AMOUNT PAID ON APPLICATION FOR DEBENTURES.

19 ,

Received of
the Sum of Rupees
being Rs. per Debenture paid on Application for
Debentures of Rs. each in the above-named Company.
Rs.

FORM 141.

Letter of Allotment of Debentures.

Limited.

Allotment No.

Date of Allotment 19

Date of Posting 19

Name of Allottee

Address

Occupation

No of Debentures applied for

No. of Debentures allotted

Amount Payable : Rs.

When Due 19

When Paid 19

Date when Allotment Letter exchanged for Debentures

Folio in Register of Debentures

Limited.

No. 19 .

Dear Sir (or Madam),

Pursuant to your application there have been allotted to you debentures of Rs. each in this Company; and I have to request that you will be good enough, on or befor the day of , 19 , to pay to the Sum of Rs. , being the amount of per Debenture payable on Allotment of the said Debentures.

The Debentures will be ready shortly of which due notice will be given. In the mean time please retain this Letter of Allotment and the Receipt for the amount payable as above, to be exchanged for your Debentures.

Yours faithfully,

To

Secretary.

Receipt.

. 19 .

Received of the Sum of Rupees being the amount payable on allotment of the above-mentioned Debentures.

Rs.

FORM 142.

Transfer of Debentures.

I
of
in consideration of the sum of Rupees
paid to me by
of
Do hereby transfer to the said
of
certain debenture
numbered and dated the day of 19
and issued by the Limited and all principal moneys and interest secured by the said Debenture, and the full benefit thereof and subject to the conditions on which I hold the same, and I the said hereby agree to take the said Debenture subject to the same conditions.
As Witness our Hands this day of
One Thousand Nine Hundred and

Signed, by the above-named
in the presence of
Witness's Signature
Address
Occupation

Signed by the above-named
in the presence of
Witness's Signature
Address
Occupation

FORM 143.

Debenture.

Issue of Rs. of debentures of Rs. each carrying interest
at per cent. per annum.
Registered Office

DEBENTURE.

No. Rs.

1. The Limited (hereinafter called "the Company") will on the day of 19 , or on such earlier day as the Principal Money hereby secured becomes payable, in accordance with the Conditions endorsed hereon, pay to
of
or other the Registered Holder hereof for the time being, the sum of Rupees.

2. The Company will during the continuance of this security pay to such Registered Holder Interest on the said principal sum of Rupees at the rate of per cent. per annum, by half-yearly payments on the day of and the day of in each year, the first of such half-yearly payments to be made on the day of next.

3. The Company hereby charges with such payments its undertaking and all its property, whatsoever and wheresoever, present and future, including its uncalled Capital.

4. This Debenture is issued subject to the Conditions endorsed hereon, which are to be deemed part of it.

Given under the Common Seal of the Company this day of , 19 .

The Common Seal of the Company was affixed
hereto in the presence of

} Directors.

Common Seal

Secretary.

THE CONDITIONS WITHIN REFERRED TO :

1. This Debenture is one of a series of like Debentures of the Company for securing Principal Sums not exceeding at any one time the sum of Rupees. The Debentures of the said series are all to rank *pari passu* in point of charge without any preference or priority one over another, and such charge is to be a floating security, but so that the Company is not to be at liberty to create any mortgage or charge on any of its property and assets ranking in priority to or *pari passu* with the said Debentures.

2. A Register of the Debentures will be kept at the Company's Office, wherein there will be entered the names, addresses, and descriptions of the Registered Holders, and particulars of the Debentures held by them respectively, and such Register will at all reasonable times during business hours be open to the inspection of the Registered Holder hereof or his legal personal representative, and any person authorized in writing by him or them.

3. The Registered Holder or his legal personal representative will be regarded as exclusively entitled to the benefit of this Debenture, and the Company and all persons may act accordingly, and the Company shall not be bound to enter in the Register notice of any trust save as herein provided, and except as ordered by a Court of competent jurisdiction.

4. Every transfer of this Debenture must be in writing in the usual common from under the hand of the Registered Holder hereof or his executors or administrators. The instrument of transfer, duly stamped, must be delivered at the Registered Office of the Company, with a fee of and such evidence of identity or title as the Company may reasonably require, and thereupon the transfer will be registered. The Company shall be entitled to retain the instrument of transfer.

5. No transfer will be registered during the seven days immediately preceding the days by this Debenture fixed for payment of Interest.

6. In the case of joint Registered Holders the Principal Money and Interest hereby secured will be deemed to be owing to them upon a joint account.

7. The Principal Money and Interest hereby secured will be paid without regard to any equities between the Company and the original or any intermediate Holder hereof or any right of set off or cross claim and the receipt of the Registered Holder for such Principal Money and Interest shall be a good discharge to the Company for the same.

8. The Company may at any time give notice in writing to the Registered Holder hereof, his executors or administrators, of its intention to pay off this Debenture, and upon the expiration of three calendar months from such notice being given the Principal Money hereby secured shall become payable.

9. The Principal Money hereby secured shall immediately become payable—

(*a*) If the Company make default for a period of six calendar months in the payment of any Interest hereby secured, and the Registered Holder hereof, before such Interest is paid, by notice in writing to the Company calls in such Principal Money ;

(*b*) If an Order be made or an effective Resolution be passed for the winding up of the Company ;

(*c*) If a Receiver of the property and assets of the Company be appointed by any Court of competent jurisdiction.

10. When and so soon as the Principal Money hereby secured shall have become immediately payable, the Registered Holders of a majority in value of the Debentures of this series for the time being outstanding may, by a writing under their hands, appoint any person to be a Receiver of the premises charged by this Debenture, but such receiver shall conform to all lawful directions given to him by any such majority as aforesaid, and any such majority as aforesaid may, by writing under their hands, remove any Receiver appointed as aforesaid and appoint another in his place.

11. The Principal Money and Interest hereby secured will be paid at the Company's Bankers for the time being or at the Registered Office of the Company.

12. The Registered Holders of three-fourths in value of the outstanding Debentures of this series may, by writing under their hands, sanction any agreement or arrangement with the Company for the compromise, modification, or alteration of the rights of the Registered Holders of the Debentures of this series as a class, and any agreement or arrangement so sanctioned shall be binding on all the Registered Holders of the debentures of this series, and notice thereof shall be given to each Registered Holder, who shall thereupon be bound to produce his Debenture of Debentures to the Company and to permit a note of such agreement or arrangement to be endorsed thereon.

13. A notice may be served by the Company upon the Registered Holder of this Debenture by sending it through the post in a prepaid cover addressed to such person at his registered address. Any notice served by post shall be deemed to have been served at the expiration of twenty-four hours after it was posted ; and in proving such service it shall be sufficient to prove the certificate of posting obtained from the Post Office.

FORM 144.

Memorandum of Satisfaction of Mortgage or Charge.

[S. 121 of the Indian Companies Act, 1913].

Limited.

To the Registrar of Companies.

The above-named Company hereby gives Notice that the [Insert here "Mortgage" or "Charge", "Debentures" or "Debenture Stock", as the case may be] dated the day of 19 , and created by the Company for securing the sum of Rs. was satisfied to the extent of Rs. on the day of 19 .

In Witness whereof the Common Seal of the Company was hereunto affixed the day of 19 , in the presence of

} Directors.

Common Seal

Secretary.

FORM 145.

Notice of General Meeting to pass Extraordinary Resolution to wind up voluntarily.

Limited.

Notice is hereby given that an Extraordinary General Meeting of the above-named Company will be held at on day of 19 at O'clock in the -noon for the purpose of considering and, if deemed expedient, passing as an Extraordinary Resolution, the following resolution : "That it has been proved to the satisfaction of this meeting that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same, and accordingly that the Company be wound up voluntarily ; And that Mr. of be and he is hereby appointed liquidator for the purpose of such winding-up".

Dated By order of the Board of Directors

Registered Office

Secretary.

FORM 146.

Notice of meeting to pass Special Resolution to wind up voluntarily.

Limited.

Notice is hereby given &c. [as in the last Form] for the purpose of considering and if deemed expedient, passing as a Special Resolution the following Resolution : "That the Company be wound up voluntarily ; And that Mr. of be and is hereby appointed liquidator for the purpose of such winding up."

Dated By order of the Board

Registered Office

Secretary.

FORM 147.

Advertisement of notice under s. 206 (1) of Resolution to wind up voluntarily.

Limited.

In the matter of

At an Extraordinary General Meeting of the above-named Company duly convened, and held at on the day of 19 , the following resolution was duly passed as an Extraordinary Resolution [*if it is Special Resolution*], as a Special Resolution, *viz.* [Here set out the resolution].

[If *the resolution does not appoint a liquidator add*]

And at the said General Meeting held on day of 19 Mr. of was appointed liquidator for the purpose of the winding up.

Dated Chairman.

FORM 148.

Notice of Creditors' Meetings given under S. 209 A.

Limited.

(In Voluntary Liquidation)

Notice is hereby given pursuant to section 209A of the Indian Companies Act, 1913 that a meeting of the Creditors of the above-named Company will be held at on day of 19 at O'clock in the -noon

Dated Director.

To

FORM 149.

Notice to Creditors to send in their Claims.

Limited.

(In Voluntary Liquidation)

Take Notice that I the undersigned liquidator of the above-named Company have fixed day of 19 as the day on or before which the Creditors of the Company are to prove their debts or claims, otherwise they will be excluded from the benefit of any distribution made before such debts are proved.

Dated

Liquidator.

FORM 150.

Notice to contributories fixing date for settling list of contributories.

Limited.

(In Voluntary Liquidation).

I the undersigned liquidator of the above-named Company give you notice hereby that I have appointed day of 19 at O'clock in the -noon, at my office at to settle the List of Contributories which has already been made out by me and that I have included you in the character of in respect of shares, and if no sufficient cause is shown by you to the contrary at the time and place mentioned above, the list will be settled by me including you therein.

Dated

To

Liquidator.

FORM 151.

Call made by the Liquidator.

(To be entered in the Liquidator's Minute Book)

In the matter of Limited.

(In Voluntary Liquidation)

This is to Witness that I of the Liquidator of the above-named Company do hereby make a call of Rs. per share upon all Contributories of the said Company in respect of all shares not fully paid up and direct that the amount of such Calls be paid to the Bank, Limited on or before the day of 19 to the account of the Limited.

Date

Address

Liquidator.

FORM 152.

Notice of Call.

Limited.

(In Voluntary Liquidation)

Take Notice that on the day of 19 the Liquidator of the above-named Company did duly make a Call of Rs. per share upon all the Contributories of the said Company in respect of all shares not fully paid up, and that the amount due from you in respect of the said Call is Rs. payable at the Bank, Limited on or before the day of 19 . If default is made in payment of the said Call interest will be charged at the rate of Rs. per cent. per annum.

Dated

To

Liquidator.

APPENDIX L.

Stamp Duty.

Affidavit (Art. 4). [Impressed label]	Imperial.	One Rupee.
	Assam, Bengal, Bombay, Burma, C. P. & Berar, Madras, Punjab, U. P. and Bihar.	Two Rupees.
Agreement or memorandum of an agreement (Art. 5). (1) If relating to the sale of a company's share. [Special adhesive stamp]	Imperial.	Subject to a maximum of Rs. 10, one anna for every Rs. 10,000 or part thereof of the value of the share.
	C. P. & Berar, Madras, U. P. and Bihar.	Subject to a maximum of Rs. 15, one and a half annas for every Rs. 10,000 or part thereof.
	Burma.	Subject to a maximum of Rs. 20 two annas for every Rs. 10,000 or part thereof.
	Punjab.	Subject to a maximum of Rs. 15, two annas for every Rs. 10,000 or part thereof.
	Bengal and Assam.	Two annas for every Rs. 5,000 or part thereof, on the value of the share.
	Bombay.	Two annas for every Rs. 2,500 or part thereof, on the value of the share.
(2) If not otherwise provided for (applicable to agreements relating to sale of business, property and assets to a company). [Special adhesive stamp]	Imperial.	Eight annas.
	Madras, Bihar, C. P. & Berar, and U. P.	Twelve annas.
	Bombay, Punjab, and Burma.	One Rupee.
	Bengal and Assam,	One Rupee.
Articles of Association (Art. 10). [Impressed label] [Articles of Association not formed for profit and registered under s. 26 of the Indian Companies Act, 1913 are exempted from stamp duty].	Imperial.	Twenty-five Rupees.
	C. P. & Berar, Madras, U.P. and Bihar.	Fifty Rupees.
	Bombay and Burma—	
	(a) Where the company has no share capital or the nominal share capital does not exceed Rs. 2,500.	Twenty-five Rupees.
	(b) Where the nominal share capital exceeds Rs. 2,500 but does not exceed Rs. 1,00,00.	Fifty Rupees.
	(c) Where the nominal share capital exceeds Rs. 1,00,000.	One hundred Rupees.
	Punjab—	
	(a) Where the authorized share capital does not exceed Rs. 1,00,000.	Twenty-five Rupees.
	(b) In other cases.	Fifty Rupees.
	Bengal and Assam.	
	(a) Where the nominal share capital does not exceed Rs. 1,00,000.	Fifty Rupees.
	(b) Where it exceeds Rs. 1,00,000.	One-hundred Rupees.

Certificate of share, scrip or stock of a Company (Art. 19). [Adhesive stamps—revenue or coloured impression from Collector]		Two Annas.
Conveyance [see Conveyance (No. 23) at p. 1196, and for remission of stamp duty see Transfer No. 62 at pp. 1198-1199].		
Copy or extract (certified by a public officer) (Art. 24). [Impressed stamp]		
(1) If the original was not chargeable with duty or the duty does not exceed one rupee.	Imperial. ...	Eight Annas.
	C. P. & Berar, Madras, Punjab, U. P. & Bihar.	Twelve Annas.
	Bengal, Bombay, Burma and Assam.	One Rupee.
(2) In any other case.	Imperial. ...	One Rupee.
	C. P. & Berar, Madras Punjab, U. P. & Bihar.	One Rupee & Eight Annas.
	Bombay, Burma, Bengal and Assam.	Two Rupees.
Debenture (Art. 27) (whether a mortgage debenture or not) being a marketable security transferable— [Impressed stamp]		
(a) by endorsement or by a separate instrument of transfer;	Imperial, U. P., Bombay C. P., Burma & Bihar.	The same duty as a Bond (No. 15) for the same amount [see infra].
	Assam, Bengal, Madras and Punjab.	The same duty as a Bottomry Bond (No. 16) for the same amount [see infra].
(b) by delivery.	......	The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture [see p. 1196 infra].
Explanation :—The term "Debenture" includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.	In U. P.	
	Where the face amount exceeds Rs. 100.	One Rupee & Four Annas.
Exemption. A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing make over, in whole or in part, their property to trustees for the benefit of the debenture holders provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.	Where the face amount exceeds Rs. 100 but does not exceed Rs. 200.	Two Rupees & Eight Annas.
	Where the face amount exceeds Rs. 200.	The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.

TABLE OF STAMP DUTY

on

BOND (No. 15).

[Impressed Stamp]

		Assam. Rs. A.	Bombay. Rs. A.	Burma & Bihar. Rs. A.	Bengal, C.P. & Punjab. Rs. A.	Madras. Rs. A.	U. P. Rs. A.	Imperial. Rs. A.
Where the amount or value secured does not exceed ...	Rs. 10	0 2	0 2	0 2	0 2	0 2	0 2	0 2
Where it exceeds Rs. 10 and does not exceed ...	Rs. 50	0 4	0 4	0 4	0 4	0 4	0 4	0 4
„ „ „ „ 50 „ „ „ „ ...	„ 100	0 8	0 8	0 8 (10 as. in Bihar)	0 8	0 8	0 8	0 8
„ „ „ „ 100 „ „ „ „ ...	„ 200	1 0	1 0	1 4	1 0	1 4	1 0	1 0
„ „ „ „ 200 „ „ „ „ ...	„ 300	2 4	2 4	2 4	1 14	1 14	1 10	1 8
„ „ „ „ 300 „ „ „ „ ...	„ 400	3 0	3 0	3 0	3 0	2 8	2 4	2 0
„ „ „ „ 400 „ „ „ „ ...	„ 500	3 12	3 12	3 12	3 12	3 2	2 14	2 8
„ „ „ „ 500 „ „ „ „ ...	„ 600	4 8	4 8	4 8	4 8	4 8	3 4	3 0
„ „ „ „ 600 „ „ „ „ ...	„ 700	5 4	5 4	5 4	5 4	5 4	4 0	3 8
„ „ „ „ 700 „ „ „ „ ...	„ 800	6 0	6 0	6 0	6 0	6 0	4 12	4 0
„ „ „ „ 800 „ „ „ „ ...	„ 900	6 12	6 12	6 12	6 12	6 12	5 8	4 8
„ „ „ „ 900 „ „ „ „ ...	„ 1000	7 8	7 8	7 8	7 8	7 8	6 4	5 0
And for every Rs. 500 or part thereof in excess of	„ 1000	3 12	3 12	3 12	3 12	3 12	3 12	2 8

STAMP DUTY ON BOTTOMRY BOND (No. 16).

[Impressed Stamp].

Imperial—The same duty as a Bond (No. 15) for the same amount.

In Assam, Bengal Madras & Punjab (Impressed Stamp) :—

		Rs.	As.
Where the amount or value secured does not exceed ...	Rs. 10	0	3
Where it exceeds Rs. 10 and does not exceed ...	„ 50	0	6
„ „ „ „ 50 „ „ „ „ ...	„ 100	0	12
„ „ „ „ 100 „ „ „ „ ...	„ 200	1	8
„ „ „ „ 200 „ „ „ „ ...	„ 300	2	4
„ „ „ „ 300 „ „ „ „ ...	„ 400	3	0
„ „ „ „ 400 „ „ „ „ ...	„ 500	3	12
„ „ „ „ 500 „ „ „ „ ...	„ 600	4	8
„ „ „ „ 600 „ „ „ „ ...	„ 700	5	4
„ „ „ „ 700 „ „ „ „ ...	„ 800	6	0
„ „ „ „ 800 „ „ „ „ ...	„ 900	6	12
„ „ „ „ 900 „ „ „ „ ...	„ 1000	7	8
And for every Rs. 500 or part thereof in excess of Rs. 1000 ...	... ...	3	12

TABLE OF STAMP DUTY

on

CONVEYANCE (No. 23).

[Impressed Stamp].

		Assam, Bengal, Madras, Punjab & Bihar.	Bombay & C. P.	Burma.	U. P.	Imperial.
Where the amount or value of the consideration as		Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A.
set forth in the conveyance does not exceed ...	Rs. 50	0 12	0 8	0 8	0 8	0 8
Where it exceeds Rs. 50 but does not exceed ...	„ 100	1 8	1 0	1 0	1 0	1 0
„ „ „ „ 100 „ „ „ „ ...	„ 200	3 0	2 0	2 8	2 0	2 0
„ „ „ „ 200 „ „ „ „ ...	„ 300	4 8	4 8	4 8	3 0	3 0
„ „ „ „ 300 „ „ „ „ ...	„ 400	6 0	6 0	6 0	4 0	4 0
„ „ „ „ 400 „ „ „ „ ...	„ 500	7 8	7 8	7 8	5 0	5 0
„ „ „ „ 500 „ „ „ „ ...	„ 600	9 0	9 0	9 0	6 8	6 0
„ „ „ „ 600 „ „ „ „ ...	„ 700	10 8	10 8	10 8	8 0	7 0
„ „ „ „ 700 „ „ „ „ ...	„ 800	12 0	12 0	12 0	9 8	8 0
„ „ „ „ 800 „ „ „ „ ...	„ 900	13 8	13 8	13 8	11 0	9 0
„ „ „ „ 900 „ „ „ „ ...	„ 1000	15 0	15 0	15 0	12 8	10 0
And for every Rs. 500 or part thereof in excess of	„ 1000	7 8	7 8	7 8	7 8	5 0

Indemnity Bond (Art. 34). [Impressed stamp]		The same duty as a Security Bond (No. 57) for the same amount (see infra).
Letter of allotment of shares (Art. 36). [Adhesive stamp—revenue or coloured impression from Collector]		Two Annas.
Memorandum of Association (Art. 39) [Impressed label]		
(a) if accompanied by articles of association ;	Assam, Bengal, Bombay, C. P. & Berar, Madras, Punjab, U. P. & Bihar.	Thirty Rupees.
	Imperial.	Fifteen Rupees.
(b) if not so accompanied,	Bombay, C. P., Madras, Punjab, U. P. & Bihar.	Eighty Rupees.
(1) where the nominal share capital does not exceed one lac of Rupees.	Assam & Bengal.	Eighty Rupees.
(2) where it exceeds one lac of Rupees.	” ”	One-hundred & Thirty Rupees.
Explanation :— Memorandum of any association not formed for profit and registered under S. 26 of the Indian Companies Act, 1913, is exempted from stamp duty.	Imperial.	Forty Rupees.
Proxy (Art. 52) empowering any person to vote at any one meeting of members of a Company whose stock or funds are divided into shares and transferable or of members or contributors to the fund of an institution. (Adhesive stamp, revenue or coloured impression from Collector] *Note*.—The duty on proxy empowering a person to vote at a meeting of creditors is the same, *i.e.*, Two Annas. *Vide* Gazette of India, 1926 Part I, p. 132.		Two Annas.
Security Bond (Art 57), (a) when the amount secured does not exceed Rs. 1,000.		The same duty as a Bond (No. 15)—[*Buttomry Bond (No. 16)—in Madras*] for the same amount.

(b) in any other case.		Five rupees [*Seven rupees eight annas—in Madras, Punjab, C. P. & Berar, Burma, U. P. & Bihar; and Ten rupees in Bombay, Bengal & Assam*].
Share Warrants to Bearer (Art. 59). [Impressed label]	In U. P. & Bihar.	The same duty as a Debenture transferable by delivery [No. 27 (b)] for a face amount equal to the nominal amount of the shares specified in the warrant.
	Imperial.	One and a half times the duty payable on a Conveyance [No. 23] for a consideration equal to the nominal amount of the shares specified in the warrant.

Exemptions :

Share warrants when issued by a Company in pursuance of the Indian Companies Act to have effect only upon payment, as composition for that duty to the Collector of Stamp Revenue, of—

(a) One and a half per cent. of the whole subscribed capital of the Company or,

(b) If any Company which has paid the said duty or composition in full, subsequently issues an addition to the subscribed capital—one and a half times per cent. of the additional capital so issued.

Transfer (whether with or without consideration) (Art. 62), (a) of shares in an incorporated company or other body corporate ;		One-half of the duty payable on a Conveyance (No. 23) for a consideration equal to the value of the share.
	Bombay.	12 annas for every Rs. 100 or part thereof of the value of the share.
(b) of debentures, being marketable securities, whether the debenture is liable to duty or not.		One-half of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.
	Bombay.	12 annas for every Rs. 100 or part thereof of the value of the share.
In U. P. in the case of (a) and (b)—		

	Rs.	Rs.	As.
When the value of the share or the face amount of the debenture does not exceed	100	0	12
Where it exceeds Rs. 100 but does not exceed	200	1	8
" " " " 200 " " " "	300	2	4
" " " " 300 " " " "	400	3	0
" " " " 400 " " " "	500	3	12
" " " " 500 " " " "	600	4	8
" " " " 600 " , " "	700	5	4
" " " " 700 " " " "	800	6	0
" " " " 800 " " " "	900	6	12
" " " " 900 " " " "	1000	7	8
And for every Rs. 500 or part thereof in excess of Rs.	1000	3	12

[For Transfer of Immovable Property see "Conveyance" at pp. 1193 and 1196.

REMISSION.

By Notification No. 1 dated 16th January, 1937 the Governor-General in Council has been pleased to remit the stamp duty chargeable under Articles 23 (Conveyance) and Article 62 (Transfer) on instruments evidencing transfer of property between companies limited by shares as defined in the Indian Companies Act, 1913, in cases :—

(i) where at least 90 per cent. of the issued, share capital of the transferee company is in the beneficial ownership of the transferor company, or

(ii) where the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 per cent. of the issued share capital of the other, or

(iii) where the transfer takes place between two subsidiary companies of each of which not less than 90 per cent. of the share capital is in the beneficial ownership of a common parent company:

Provided that in each case a certificate is obtained by the parties from the officer appointed in this behalf by the Local Government concerned that the conditions above prescribed are fulfilled.

N. B. The Government of Bengal has appointed the Registrar of Joint Stock Companies, Bengal as the officer in Bengal who is to certify that the conditions prescribed in the above Notification have been fulfilled—see the Calcutta Gazette of the 18th February, 1937, Part I.

APPENDIX M.

Indian Companies (Amendment) Act, 1941.

(Received Governor General's Assent on 26th November, 1941).

Act No. XXVI of 1941.

An Act further to amend the Indian Companies Act, 1913.

Whereas it is expedient further to amend the Indian Companies Act, 1913, for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

Short title. 1. This Act may be called the Indian Companies (Amendment) Act, 1941.

Amendment of section 104, Act VII of 1913.

2. In section 104 of the Indian Companies Act, 1913 (hereinafter referred to as the said Act),—

(a) after sub-section (2), the following sub-section shall be inserted namely :—

"(2A) If the registrar is satisfied that in the circumstances of a particular case the period of one month specified in sub-sections (1) and (2) for compliance with the requirements of this section is inadequate, he may extend that period as he thinks fit, and, if he does so, the provisions of sub-sections (1) and (2) shall have effect in that particular case as if for the said period of one month the extended period allowed by the registrar were substituted" ;

(b) in the proviso to sub-section (3), for the words "within one month after the allotment" the brackets and figures "within the time specified in sub-sections (1) and 2" shall be substituted.

Amendment of section 282B, Act VII of 1913.

3. In sub-section (2) of section 282B of the said Act, for the words "shall be invested, and shall be invested only", the words "shall be either deposited in a Post Office Savings Bank account or invested" shall be substituted and for the words "which are not so invested shall be" the words "which are not so deposited or invested shall be so deposited or" shall be substituted.

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